UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

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In the Matter of:

MOTORS LIQUIDATION COMPANY, ET AL.,

f/k/a General Motors Corp., et al.,

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

October 21, 2010

10:11 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Motion of the Official Committee of Unsecured Creditors of Motors Liquidation Company to Enforce (A) the Final DIP Order, (B) the Wind-Down Order, and (C) the Amended DIP Facility

Debtors' Motion for an Order (I) Approving Notice of Disclosure Statement Hearing; (II) Approving Disclosure Statement; (III) Establishing a Record Date; (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan; (V) Approving Solicitation Packages; and Procedures for Distribution Thereof; (VI) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (VII) Approving the Form of Notices to Non-Voting Classes Under the Plan

Statement of the Official Committee of Unsecured Creditors Holding Asbestos-Related Claims Regarding the Anonymity Protocol

Transcribed by: Dena Page

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P R O C E E D I N G S

THE COURT: All right, GM Motors Liquidation Company. Can you hear me, or do I have a problem with my microphone?

MR. KAROTKIN: We can hear you.

THE COURT: All right. I gather that there's still many, many people on line downstairs, but we have so much to do today that I think we need to get started. I assume that most people are here by reason of the disclosure statement, and subject to your rights to be heard, I'm inclined to take that first.

Before we do, I have some preliminary remarks on that. Mr. Karotkin, can you think of any reason why I shouldn't deal with disclosure statement first?

MR. KAROTKIN: Stephen Karotkin, Weil, Gotshal & Manges for the debtors. Your Honor, we certainly have no objection to proceeding in that fashion. I will note that in the agenda that we furnished to you, we did provide for Mr. Mayer's issues to go first.

THE COURT: I never got that agenda, Mr. Karotkin. I don't know what happened to it.

MR. KAROTKIN: Okay, we can --

THE COURT: Wait, I've got it now. I don't want to deal with the creditors' committee first.

MR. KAROTKIN: I think that settles it, then.

THE COURT: Okay. All right. On disclosure

statement. Folks, one of the problems we have whenever judges like me are asked to deal with disclosure statements is that because we need to deal with them in real time, we don't write on disclosure statement issues. But I have a continuing problem in all of my 11s, and sometime I'm going to dust off one or more of the transcripts because I go through the same thing each time, and I'm just going to have them posted on the Internet. But people don't get it when we're dealing with disclosure statements. This is not the time to deal with confirmation issues, and despite that seemingly obvious fact and the fact that the purpose of a disclosure statement is to give the reasonable creditor or stakeholder the information that he, she, or it needs to vote on the plan, I get the same stuff over and over again, and I got it on this motion, this motion to approve a disclosure statement, which is fundamentally a disclosure document, kind of like a prospectus to a person to permit the vote. If, notwithstanding my saying this as clearly as I can, people are going to still try to argue confirmation objections, they're going to get me even crankier than I am now.

Additionally, although there is some case law out there that says if a plan is patently unconfirmable, we'll deal with it at the disclosure statement stage, in ten years on the bench, now, and the thirty years I was a lawyer before that, I've never seen on in any manner in which I was involved. Not

even in the small cases, much less the large 11s in which the problem incident to confirmation may be very real, but where they're dealt with by the traditional means: confirmation objections in a hearing under 1129. So don't waste my time with the patently unconfirmable stuff. I think this goes to either asbestos or future claims rep or both. I've read the papers, and those contentions are rejected. We'll deal with the extent to which any disclosure issues have to be addressed.

Then, another thing that I see over and over again, and folks, it drives me ballistic, is when people try to deal with their private needs and concerns, their private disputes with the debtors or with the creditors' committee or whoever's suing them or whoever has a dispute with them on an executory contract, and they try to elevate those into disclosure statement objections. The purpose of a disclosure statement hearing is not to deal with people's private needs and concerns. If and when those disputes are teed up for judicial determination, people get the usual due process. But do not waste my time with objections of the character that the disclosure statement doesn't disclose sufficiently how you plan to treat me. I don't want to hear about that. The extent to which a disclosure statement issue has validity is the extent to which it deals with the disclosure to people across the board who are voting on the plan. I'll hear objections of that character.

So for the avoidance of doubt, I'm not going to allow the distributions to the thousands of Old GM creditors to be delayed by people pushing their private agendas.

Now, I'm going to tell you the order in which I want disclosure statement objections addressed because I have issues here similar to those that I addressed at the 363 hearing where if we had a parade of people coming up -- even though I assume that parade will be materially shortened since I told people the standards under which this hearing is going to be held -- we'd never get done. In each case, I'm going to want to hear from the objector I identify. Then I will hear the debtors' or any other plan supporter's response, and then we'll deal with what the disclosure statement needs to be done to deal with that objection. And so Mr. Karotkin, you're going to be bouncing up and down as we deal with particular objections, but you're not going to speak first in each case except to the extent that you think it's necessary to put on the record resolutions of objections before people speak.

I want to hear first from the creditors' committee. Then from the present asbestos creditors, that is, their official committee. Then from the asbestos future rep -- future claims rep. And then, to the extent they haven't been resolved, by the United States Trustee's Office. Then I'll hear any nonrepetitive comments by others. And again, I'm going to be looking for people to be nonrepetitive and to

understand the principles under which a disclosure statement hearing is addressed.

So Mr. Karotkin, you want to yield to Mr. Mayer or one of Mr. Mayer's partners?

MR. KAROTKIN: Can I just make a couple of opening remarks?

THE COURT: Sure, yes.

MR. KAROTKIN: Thank you, sir. I would first like to note, Your Honor, for the record -- and you may have seen this -- that yesterday, the Department of Justice filed a copy of a comprehensive settlement agreement relating to the debtors' environmental obligations with respect to its owned sites. That reflects a comprehensive resolution of the liability with respect to those sites. Those sites will be transferred, under the plan, to what is known as the environmental trust, and that settlement is among the U.S. Treasury, the Department of Justice, the EPA, a number of state governments, as well as the Indian tribe adjacent to the Messina facility in upstate New York. That settlement is a critical prerequisite to moving forward with the plan, and obviously, we are quite pleased that that has been brought to resolution. It covers eighty-nine sites in fourteen states. And again, this is as to the debtors' owned property. It does not address superfund sites. And it provides for the establishment of the environmental trust under the plan that

will administer the remediation of those sites and provides for cash funding from the debtors to the trust on the effective date of the plan of approximately 640 million dollars. And those are proceeds from the wind-down facility provided by the U.S. Treasury.

We are obviously very pleased. That is a major, major hurdle that's been accomplished to move forward with confirmation.

THE COURT: Well, pause, please, Mr. Karotkin because I'd be inclined to agree that it's a huge development, but I also assume that you're going to have to put in some paragraphs to describe it in the disclosure statement.

MR. KAROTKIN: I think it -- there is some description in there already, but we can certainly buttress that.

THE COURT: Well, at the time the disclosure statement was drafted, had the deal been made?

MR. KAROTKIN: The economics -- a lot of the economics had been agreed to already, and it was really finalizing the documentation, but we will take a look and make sure that there's appropriate disclosure. And to the extent it needs to be beefed up, we will do so. Again, as I was about to indicate, it is obviously our intention to submit a revised disclosure statement and plan to address the objections, and we will certainly work with the creditors' committee, the other committees, and as well as with U.S. Treasury to make sure that

everyone is happy with whatever additional disclosure as to the environmental settlement as appropriate.

THE COURT: Um-hum, now, I don't know if you can answer this or I need the U.S. Attorney's Office to do it, but in some of the other similar settlements of environmental issues that I've dealt with, I've had to approve reasonableness not just from the perspective of the estate but to make sure that the government wasn't giving away the store. Do I have a similar issue here?

MR. KAROTKIN: I may defer to Mr. Jones on that, but I know that this has to go through the appropriate government procedures, I think in the federal register, if I'm not mistaken. And there is a common period, but why don't I defer to Mr. Jones.

MR. JONES: Your Honor, David Jones from the U.S. Attorney's Office, Southern District of New York for the United States. And I believe the answer is yes, Your Honor. Mr. Karotkin is correct. The settlement agreement, as we indicate in our notice of lodging, is subject to a public notice and comment period which is independent of this Court's review, and then it is also subject to both types of settlement review, as I think Your Honor has seen in other cases.

THE COURT: Um-hum. All right --

MR. JONES: Oh, Your Honor, very quickly, I may add, also, just to confirm my understanding with debtors on the

disclosure statement front, the current version does describe the settlement in principle because the main terms were blocked in. The deal has now been finalized, and as Mr. Karotkin says, perhaps they'll be updating and firming up their description, but I think it is already reflected.

THE COURT: Okay, Mr. Karotkin.

MR. KAROTKIN: Yes, again, just for the record, the motion before Your Honor today to approve the disclosure statement as well as solicitation procedures with respect to the plan and setting a confirmation hearing and objection procedures was filed on September 3rd, and as set forth in that motion, notice was given by mail to all known creditors. It's my understanding, Your Honor that notice of this hearing was mailed to approximately two million creditors and other parties-in-interest, as well as stockholders. And certificates of service are on file; in addition, Your Honor, notice by publication of this hearing was given in several newspapers, and certificates of publication are on file, as well, with the Court.

Approximately sixty responses and objections have been filed. We furnished Your Honor with a chart of those, and we believe really on thirteen of those relate to the adequacy of disclosure, and as I think you have already noted, the balance relate to objections to confirmation which are appropriately deferred.

Some of -- we have been in discussions with various parties to address the disclosure statement objections and are working on language, and in fact, have agreed to language with some parties to address their concerns. I think that with respect to the Office of the United States Trustee, all of the issues raised by the United States trustee in its objection, we've agreed to resolve with them, and I think that the chart annexed to our response reflects that. And of course, I think Mr. Masumoto is here, and he can hopefully confirm that.

A number of people, Your Honor -- and we can address this if it comes up while the objectors speak -- have obviously noted that there were blanks in the plan with respect to certain numbers. Obviously, we intend to fill those numbers in. A lot of those numbers have been refined since September 3rd when the disclosure statement was filed, and we, of course, will provide the best information we have available with respect to those numbers, as of the time that we will submit the revised disclosure statement.

We have also agreed, and I'm sure you noted, that certain of the objecting parties had requested that we attach as an exhibit with the solicitation materials what is called the Guk (ph.) trust agreement. We will certainly do that. I believe that that is substantially final at that point, and in addition, some parties have asked that we attached the environmental settlement agreement to which I just referred,

and we will be more than happy to do that, as well.

Other parties have requested that a going-forward budget with respect to the various trusts be included as an exhibit to the disclosure statement. That always was contemplated, and again, with the amended disclosure statement, that will be filed, as well.

I think with respect to the objection filed by the future claimants representative and the asbestos claimants' committee, there was some reference to attaching copies of the asbestos trust document, as well as the asbestos claims resolutions procedures. Typically, in my experience, and I think they probably would confirm that, that document is drafted by those committees.

THE COURT: Well, you said that in your reply, so what's the game plan, then? You're just going to say that if they want it, they can have it?

MR. KAROTKIN: If they want it, they can have it. If they don't want to draft it, then we will do so. I, frankly, don't believe it's material in this case to have it annexed as an exhibit. But if they believe it is, we're not going to fight them on that.

And I think with that, Your Honor, I will defer to Mr. Mayer.

THE COURT: Okay. Mr. Mayer, you want to come up, please?

MR. MAYER: Thank you, Your Honor. Thomas Moers Mayer for Kramer Levin Naftalis & Frankel, counsel to the official committee of unsecured creditors. We appreciate the debtors' work towards solving a number of our issues. The Guk trust agreement is pretty close to final. We do have some final negotiations, mostly with Treasury, over the consent rights they want. But I'm hoping that that will be resolved. We had a conversation with them yesterday.

With respect to pure disclosure issues, and I don't think we've raised anything that we thought of as a confirmation issue, but -- I hope not. First, we do think it's appropriate that creditors know who's going to run this thing when it comes out, so we have asked for the identification of who's actually going to do what needs to be done. And my understanding is with one or two exceptions, that's doable.

I might add that with respect to professionals retained by the creditors' committee, Kramer Levin does not expect to have ay role going forward post-effective date. It's possible if we're still litigating asbestos that my firm will continue to work on that, and if we're still litigating who owns the term loan litigation, the issue of ownership is one that my firm feels quite strongly about, so we will seek to maintain a role in that. But otherwise, with the exception of those two particular issues, I stand today as someone who does

not expect to be here after the plan is confirmed.

THE COURT: Um-hum, well, pause please, Mr. Mayer, because you've been around the block a few times. The issue of future leadership has come up most commonly in those cases. Unfortunately, we don't have them as often as we used to, where we're reorganizing a company, and you're going to have a reorganized debtor that has a board. And my memory, and I'm perfectly willing to be corrected, is that very, very often, the incumbency of the new board hasn't been selected by the time the disclosure statement goes out, and the debtor supplements it before confirmation. I think I need to make a finding at a confirmation hearing as to that, but I have a memory which may be numb or incorrect that we haven't done it that often at the disclosure statement stage. Do you think I'm mistaken in that regard?

MR. MAYER: No, Your Honor, I think you're absolutely right. And Your Honor is correct. It is that the requirement that the management be identified is in the conditions to confirmation. In this context, my view was -- and if I'm wrong, I'm wrong -- that this is something the creditors should know. You refer to this as a prospectus; it's kind of a combination prospectus and proxy statement. Sometimes it's not possible to identify who's going to do the work. We believe, based on our discussions with the parties, that it is indeed possible, and we think it would be useful for creditors to

know, but I leave that to Your Honor's discretion. As far as I know, ther's nothing that requires that this information would be disclosed, but I am of the view the creditors should know who's going to run the show.

THE COURT: Okay, and to put it in context you're talking about who's going to be captain of the ship or the principal decision makers as we liquidate Motors Liquidation Company --

MR. MAYER: Correct.

THE COURT: -- because this has nothing to do with, like, a real living company --

MR. MAYER: Correct.

THE COURT: -- like New GM would be.

MR. MAYER: Correct. And again, I think it's inappropriate to talk names, but I think -- to -- without disclosing any discussions, that one of the issues is does the current team continue to manage the wind-down or is there a new team.

THE COURT: Okay.

MR. MAYER: And there's going to be -- it's going to take some time, and it's a -- every now and then, somebody says to me, well, GM's over. And I say to them, well, according to the bond prices that are out there, there's something in the neighborhood of twelve to fourteen billion dollars of value to be distributed under a plan, and in other cases, somebody would

say gee, if you have twelve to fourteen billion dollars of value to distribute, that's a real case. Well, that's what we have here, and it's going to take some time to distribute it. So there's work to be done post-effective date. I don't plan on doing very much of it, but I think creditors would like to know who's going to do the work. And if Your Honor decides differently, then I understand that.

With respect to the budget, we made a lot of progress. We do think creditors need to know what the risk is, that their securities will be invaded if the cash is not sufficient. That's a topic of some heated discussion right now, and it, of course, is not unrelated to the discussion of who's going to do the work. Treasury has the right to a reasonable budget. In my view -- and I hope we don't have to actually litigate this -- that does not mean the Treasury gets to pick who actually does the work. Those two issues sometimes meld together. We're working on it. I won't pretend -- and as I said at the beginning, it has nothing to do with me -- I won't present those discussions have been completely without heat, but hopefully, they will produce some light, and there has been progress on a budget, as far as we're concerned.

The -- before I get to the really big one, one other area where the debtors and we continue to have an issue --

THE COURT: Can you pause on that, please, --

MR. MAYER: Sure.

THE COURT: -- Mr. Mayer, so I make sure I'm keeping up with you. The point that you made, which I take is the premise for the discussion, that there's a risk that the securities will be invaded and that the creditor community needs to get some comfort as to whether it knows whether or not that's happening or going to happen. I understand that. But does that require knowledge of the specifics of the budget and who's going to be doing stuff to implement the budget, or does it instead require some kind of macroeconomic discussion as to whether there's going to be a -- what I'll call crudely a blowing of the budget?

MR. MAYER: I think it's the latter, Your Honor. I don't know that we need to have actual -- actual subsets disclosed. Why don't we just say that there are certain numbers that have been discussed where the committee would be comfortable that there's enough money, and there are certain numbers that have been discussed where the committee is not comfortable, and we're rewinding the discussion that we had a year ago, and hopefully we'll get to yes on a number that everybody can agree provides a reasonable shot that the costs will be covered.

THE COURT: Okay, continue, please.

MR. MAYER: The next point is one that I personally feel strongly about. I know that the debtors don't. We're going to get flooded with calls -- we always do -- trying to

figure out what the claim universe is. The debtors have agreed to put in a range of projected claims. The monthly operating reports have a breakdown by category, and frankly, we have a breakdown by category of ranges of where contract claims are estimated to go from X to Y, and asbestos claims are expected to go from A to B. And we are going to get calls about that. And I believe those ranges on a category by category basis are material to creditors who will be deciding what to do and should be in the debtors' disclosure statement. If they're not in the debtors' disclosure statement, a potential sort of halfway house is that the debtors' disclosure statement can contain a link to my web site, and we'll post those ranges on our web site. But we are going to get calls on that. And a range of outcomes for an executory contract litigation is different from a range of outcomes for asbestos litigation, and this is going to be material.

Your Honor made a very interesting point which is that this is like a prospectus. In fact, if you take a look at Section 1145 in another case, you can't have trading post-effective date, unless a copy of the disclosure statement is resident with the broker-dealers who were actually doing the trading. There's a uni -- this is an enormous universe of people who are going to get distributions from this estate. And they're going to get distributions in two flavors. They're going to get GM stock and warrants that they can trade as they

see fit. And then they're going to get interest in a trust which is going to release additional stock and warrants and, if we own the term-loan litigation, and if we win, there'll be another trust distributing cash. And that'll happen over time. And people need to know, over time, what's going on. And I think this is the kind of information that people need to know to understand whether they should buy, sell, or hold, and if it isn't in the disclosure statement or available on the web site, it's going -- it always does -- it leaks out and different people benefit in different ways. I'm a believer in more information rather than less. Put up whatever language you want about how all these numbers may be wrong, but this is information that the committee has and that is affecting our judgments on whether to settle or prosecute, for example, asbestos claims, how important the term loan litigation is anyway. We make real-time judgments based on this information. And we believe that creditors should have it generally. And again, I leave that to Your Honor's judgment. There's nothing in 1125 that says this has to be available, but I think it is material, and it should be available.

THE COURT: Help me with the thing that's causing me to scratch my head, Mr. Mayer, which is that in some cases, the amount of funded debt or trade claims that are capable of getting one's arms around with a fair degree of comfort represents a very high percentage of the debt in the whole

case, and therefore, you got a pretty good arm -- your arms around, pretty well, around the claims universe. But when you have a lot of question mark types of debt, all of which is still debt, if you have the range, it doesn't tell you a whole lot. Where are we in this case, in your view?

MR. MAYER: We're in the middle. There are some odd points to this case. First, you have about -- I think the big bond issue that Wilmington Trust is the indenture trustee for is twenty-three billion principal amount. Did I get that right?

UNIDENTIFIED SPEAKER: Yes.

MR. MAYER: And you've got some sort of odds and ends, other bond issues out there. You have a very large claim filed by what we call the Nova Scotia bonds that we have a very large range for, and that's an issue before Your Honor that I'm not going to be handling.

THE COURT: You also have a very large objection to that, don't you?

MR. MAYER: There's a very large objection to that. So you can call that funded debt, but that's sort of funded debt that could go from here to here, depending on where Your Honor comes out.

Then you've got asbestos; there's the range there. There's product liability claims. Those are being handled by an ADR process, and I might add, as far as we can gather from

the reports that we've gotten, they've been fairly -- that's not a complaint. It's been handled extremely well. Those claims are coming down, it's very efficient, and it's all working. But when you come right down to it, the initial range that was negotiated for partial dilution protection was between thirty-five and forty-two billion dollars. So you had, just taking that -- and I want to be careful not to put into the record anything that's not public -- but if you take that, which was a public measure, what that estimated was that there was a twenty percent dilution risk that was partially mitigated by the deal with New GM. That -- I don't want to provide a new disclosure as to whether that's an accurate range or an inaccurate range, but that gives you an order of magnitude.

THE COURT: And you say partly because it provides for more stock but not new -- more -- new warrants?

MR. MAYER: That is correct. That is correct. And the back of the envelope calculation when the deal was cut was that the warrants were worth as much as the stock. I don't intend to put on evidence of this today; the current trading price of the bonds indicates the warrants are worth even more than the stock right now. So the dilution protection for the stock is less of a protection than it used to be just because the warrants are worth more. And I'll -- the automobile world is better today than it was when these warrants were negotiated in the spring of 2009.

So I hope that's an answer to Your Honor's question. It's not an enormous swing, but I believe it's a material swing. Thirty-five to forty-two billion dollars, that's twenty percent. New GM has put out into the public domain its estimate of thirty-seven billion. I don't know what the basis for that is, by the way, and I don't know that anybody at Old GM knows what the basis for that is, but that's in New GM's 10-Q.

THE COURT: All right, continue, please.

MR. MAYER: The last thing that I want to raise unfortunately brings us back to the term-loan litigation. Your Honor, that is potentially a billion-five asset, and I think that has to be resolved before the disclosure statement is approved because of the following unfortunate dynamic. Your Honor, the committee will probably be among the last parties ever to recommend a liquidation as opposed to a reorganization. Reorganization -- I shouldn't say reorganization. A Chapter 11 liquidating plan, as Your Honor has noted, you have 1145 in Chapter 11; you don't have it in Chapter 7. It would be complicated but not impossible to distribute New GM shares by a Chapter 7 trustee. You might have to go under 3(a)(10) of the Securities Act; you might have to use Rule 144.

THE COURT: Wait; I thought -- of the '33 Act? How can you distribute so much stock in compliance with the '33 Act other than under an 1145 exemption?

MR. MAYER: Section 3(a)(10), Your Honor, provides that a Court may approve a settlement, and that provides an exemption to the requirement of registration statement under the '33 Act. It hasn't happened often, but it is out there, and there are also provisions for distributions over time, especially where the stock that is being distributed is publicly traded. Nobody knows if the IPO is going to go effective, but I think it's a pretty good bet. And by the time we come out, certainly, those shares will be registered in trading, and this will be in the nature of a release of relatively small amount of total GM stock into a market where the IPO has already become effective.

THE COURT: In other words, because New GM is in '33 Act compliance.

MR. MAYER: Oh, New GM is going to do a '33 Act registration statement. It's filed a red -- I don't know if it's a red herring but it's filed a draft.

THE COURT: But it hasn't become effective, has it?

MR. MAYER: No, Your Honor. I'm trying to think of what's public and what isn't.

THE COURT: Well, don't try to guess.

MR. MAYER: Let's put it this way.

THE COURT: I don't need to get an answer to that question that much.

MR. MAYER: They -- what's -- I mean --

THE COURT: I hadn't been aware of that '33 Act exception. 3(a)(10) you said?

MR. MAYER: It's 3(a)(10). And again, under Rule 144 which has been liberalized substantially since I started practicing, there's a holding period, and you can dribble during the holding period, and the holding period isn't that long anymore. Look, none of this is great. This is all a subpar outcome for distributing the stock. But it can be done, and it's not like this is going to be brand new stock that nothing is trading. This stock is going to be trading, and they're going to be -- New GM is already filing Ks and Qs. And unless they pull the IPO, they expect that it will go effective relatively soon -- there actually has been a tremendous amount put in the public domain. One of these days, somebody should probably write a satirical article about how gun-jumping doesn't seem to apply in this particular circumstance because there's been a lot of chatter by the CEO and others about where they're going to price it, when it's going to go effective.

But in any event, the betting is it is going to go effective, and there will be tradable stock. It is a matter of public record that this estate cannot distribute stock through a plan or otherwise until sixty days after the stock is distributed through the IPO, if the IPO is going forward. That was negotiated as part of the sale transaction. So by the time

stock is going to creditors, here, there's going to be a public market for New GM stock assuming the IPO goes effective.

So that brings me to my problem. This is a liquidating plan, and we have an asset that could be zero, and it could be a billion-five plus whatever derives through the amount of post-judgment interest there is if the judgment is obtained. A billion-five is a lot of money. I said that you look at the bond prices, it looks like we're getting somewhere north of twelve and a half billion (sic) dollars of value. A billion-five is a noticeable improvement on 12.5 billion dollars. If this disclosure statement is approved and it goes out for a vote, everybody who votes yes is giving up rights, under 1129(a)(7) with respect to that billion-five if Your Honor were to rule in Treasury's favor and say that Treasury still has a right under 1129(a)(9) to the proceeds of the term loan litigation because the only argument that Treasury has raised is 1129(a)(9) which doesn't apply in Chapter 7, which means you need a new liquidation analysis. Again, I don't want liquidation here. But I don't want creditors being told vote yes on a plan and your yes estops you from coming in later and saying, wait a minute, if we do it in a Chapter 11 we lose the billion-five; if we do it in a Chapter 7, I get my share of it. I don't want people to have to make that choice. That's one of the reasons why we moved, and one of the reasons why the additional fact that there was a November 1 hearing on summary

judgment, why we hope Your Honor will decide that issue today or at least before the disclosure statement comes out, because people won't -- you're exposing them to a risk if they vote yes. And I guess we can change the disclosure statement around such that it is prominently noted if you vote yes, and if the Court decides the Treasury owns this lawsuit under 1129(a)(9), you could be giving up your right of a pro rata share of a billion-five. See liquidation analysis attached as an exhibit; it shows what the outcome is. You could do that.

THE COURT: It's the obvious answer, isn't it?

MR. MAYER: I think that is definitely not optimal.

THE COURT: I'm sorry?

MR. MAYER: I think that's definitely not optimal.

So that's really it for our colleagues. Did I leave anything -- Jen, did I leave anything out?

THE COURT: I assume the disclosure statement is also going to tell the creditor community that the ability to collect a billion and a half or any subset of that is not assured.

MR. MAYER: Oh, absolutely, and would also say liability's not assured, collection's not assured. As we said in our papers -- I think we said in our papers, there are -- we are told there are forty recipients of this money. One of the problems with this lawsuit, Judge --

THE COURT: And if I'm not mistaken, there are some

remaining UCC-1s that are still on file, like, twenty-six of them, apart from the most important one.

MR. MAYER: Yes, you're now getting into areas where, because I'm not the counsel handling that suit --

THE COURT: All right.

MR. MAYER: -- would probably have to have Butzel Long respond to that.

THE COURT: No, but one thing that I have assumed is that just like a prospectus has risk factors, the disclosure statement will disclose risk factors associated with the Butzel Long litigation succeeding on the one hand or failing on the other.

MR. MAYER: Absolutely. And as we said in our papers, I believe, in my view, this is going to go to the circuit. This is a pure UCC question, up or down, and not really capable of settlement because you have too many people on the other side already have their money.

THE COURT: Um-hum.

MR. MAYER: Unless Your Honor has further questions.

THE COURT: No, I'd like to hear from Mr. Karotkin on the issues you articulated.

MR. MAYER: Thank you.

MR. KAROTKIN: Stephen Karotkin, Weil, Gotshal & Manges.

I think I have them in order, Your Honor. I think Mr.

Mayer wanted the Guk trust administer named in the disclosure statement. Is that correct?

MR. MAYER: The folks working for the Guk trust and the administrator, yeah.

MR. KAROTKIN: Well, as far as we know, and I think Mr. Mayer knows better than we do, the Guk trust administrator is going to be Wilmington Trust Company, and we're happy to disclose it. And we also -- it's our understanding that the intention is that the AlixPartners firm be retained to continue to do work post-effective date on behalf of the Guk trust --

THE COURT: Any problem in telling the creditor community that?

MR. KAROTKIN: Not in the least, as long as Mr. Mayer tells us that that is the decision --

MR. MAYER: No, that's -- we don't have a problem with that. And I didn't -- that's for -- is Alix okay with that?

UNIDENTIFIED SPEAKER: Yeah, no worries.

MR. KAROTKIN: So we're happy to do that. I think he addressed the budget already. As I said, it is our intention to file a budget with the amended disclosure statement, which I expect will address that issue, as well.

With respect to the claim universe in more detail, with respect to the categories of claims, I have a couple of views on that. I guess first and foremost, I don't think it's necessary, and I think that what Mr. Mayer is saying that he

needs that to protect people currently, in his view -- or, he needs, in his view, to protect people who currently are trading in claims. And the bondholders who, perhaps, want to sell. I don't believe it's the purpose of a disclosure statement to facilitate trading in the marketplace.

THE COURT: Well, of course, it isn't, but I didn't hear Mr. Mayer say that. If he did, it would have gotten my attention because -- I'll give him another opportunity to be heard, but I think my purpose in life is not to exist to serve claims traders. But I thought that his -- the thrust of his point was to give creditors some ballpark or universe opportunity to decide whether they're going to get diluted. Now, was that his delicate way of telling me that this is really a claims trader issue, in your view?

MR. KAROTKIN: I don't know; he can respond to that. But as I indicated earlier, we intend to put in a range of what we believe will be the allowed claims in class 3, which is the unsecured creditor claims. And I think what he wanted was a further breakdown by category within class 3 of those claims, based on some information that AlixPartners and MLC has done and based on some refinement, I guess, that FTI has done on behalf of the creditors' committee. I don't think that's necessary. As I said, we will provide a range on an aggregate basis as to that. My concern, Your Honor, is that once you go --

THE COURT: Pause, please, Mr. Karotkin. Are you -- I may be articulating the question in the wrong way because I think, for instance, that asbestos claimants get the same thing as -- present claimants, at least, get the same thing as general unsecured claims. But would there be a difference in what claims classes get other than the oddball priority claims, or something like that?

MR. KAROTKIN: No. Everyone gets -- although the asbestos claims are classified separately from the general unsecured claims --

THE COURT: They get the same cents on the dollar the general unsecureds get.

MR. KAROTKIN: The theory is they get the same ratable distribution on the dollar that other creditors get. So again, that's why I think that the aggregate amount is the relevant amount. To break it down further, I think there would have to be so many disclaimers. I suppose if the creditors' committee wants to have an exhibit to the disclosure statement that says this is their view, or this is their belief based on their analysis, I'm not sure we would object, but again, I don't think it's necessary. And I do -- we're talking about voting on the plan. We believe the aggregate amount for the class is what's relevant, and that no further breakdown is necessary. If Your Honor disagrees, as I said, Mr. Mayer has prepared a breakdown, and if his clients want to take responsibility for

that, I leave that up to you, Your Honor.

With respect -- his last point, I think, is with respect to the avoidance action, and I think that --

THE COURT: What about blowing the budget?

MR. KAROTKIN: I'm sorry?

THE COURT: Or is that fully resolved now?

MR. KAROTKIN: I'm sorry, I didn't hear you.

THE COURT: The budget. Is that fully resolved?

MR. KAROTKIN: I think, as Mr. Mayer indicated, and I would agree with him, there are still discussions going on with Treasury as to the budget, and the amount of the budget and how it will operate. And I am hopeful that -- I'm hopeful that before we file the amended disclosure statement, that will be resolved. It may not be resolved, and we may be back here with you seeking some appropriate relief.

And I think the last item he raised was with respect to the avoidance action, and I think that what he was saying is before -- I think what he was saying is that before the disclosure can go out, Your Honor has to rule who's entitled to it, so that information can be set forth in the disclosure statement. And I think Your Honor had the appropriate answer, that why can't there be disclosure of what happens under various scenarios. And we already do have that disclosure, and that can be supplemented, as well, based on some estimates. But the plan and disclosure statement are very clear that

either the avoidance action proceeds go to Treasury or they go for the benefit of unsecured creditors, depending on either a settlement or a litigated outcome. And we can add language that will describe the differences in the expected distributions, based on those two scenarios. And I think what Mr. Mayer is saying, well, that's still not enough. And he is of the belief, and I frankly don't understand it, Your Honor, that in Chapter 7 there is a different result with respect to the avoidance action. As I understand it, and the argument being made by Treasury is that they have a superpriority claim with respect to the --

THE COURT: And your point is you're going to have that same superpri in either 7 or 11?

MR. KAROTKIN: Yeah, that's my understanding, and --

THE COURT: If they have one at all.

MR. KAROTKIN: Correct. If they have it, they will have it in Chapter 7. If they don't have it, it makes no difference.

Now, if Mr. Mayer would like to add a paragraph to the disclosure statement -- I think this is what maybe you were suggesting -- that says the creditors' committee believes that in Chapter 7 something else will happen, we certainly have no objection to that, and the government or the debtors or whoever else is interested can say they either disagree with that or they agree with that. And that may be one way to go.

THE COURT: Okay. Mr. Mayer? Any further reply?

MR. MAYER: Just to be clear, Your Honor, because it's -- to be clear, our position is the Treasury does have a superpriority claim, but that it has waived both lien and recourse to the term-loan litigation, and the only thing they have is the requirement under 1129(a)(9) that in Chapter 11, they have to be paid whether or not they have recourse. Section 1129(a)(9) doesn't apply in a Chapter 7 liquidation. They would be in a position of saying they have a superpriority claim, but they have waived recourse to this asset, and there is nothing left in the Code that gives them any hook. We don't think 1129(a)(9) gives them a hook, either, for reasons that are set forth in our papers, but that's for argument at a later time. That's why there's a difference between Chapter 7 and Chapter 11. 1129(a)(9) doesn't apply in Chapter 7, and that's all they have. That's our view.

THE COURT: Okay. All right, here's what we're going to do on this, folks. I think that on the first issue, who's going to be quarterback in the litigation, we've now resolved that consensually. And I think we have on the budget, as well. In any event the best available information in broad terms will be provided on the budget because I do think that it's important to the creditor community to get whatever sense they can, recognizing uncertainties as to what we're talking about on the budget.

On the range of recoveries, the debtors' proposal that the presently known overall range be disclosed will be satisfactory from the perspective of duties on the debtors. However, if the creditors' committee wants to put in supplemental information, it will have the right but not the duty to do so, as long as it just decides what it wants to do in a reasonable period of time.

On the control of the term-loan litigation -- or, that's not the control, because it's -- the control is the creditors' committee, but the entitlement to proceeds in this ongoing dispute as to whether the alleged superpri rights -- there are superpri rights, but the effect of the superpri rights on the recourse and nonrecourse, it will disclose the outcome of the litigation that I will hear after we deal with the argument on that, which has obviously not been put first on the calendar. And to the extent which I am not now deciding, that I have not fully decided those issues, the consequences of anything undecided will be added to the discussion of the uncertainties as to the underlying litigation itself. If the creditors' committee wants to be the principal drafter of that, since it knows so much about the issues, I'm going to give the creditors' committee drafting control over that document and the debtors are going to put in whatever the creditors' committee reasonably wants to say. If I thought there were any risk that the creditors' committee would be saying something

unreasonable, I'd give the debtors a chance to be heard on that, but I don't see that as a material risk. If you need an escape valve, you can call me up on the phone. But basically, this is something that creditors' committee has a lot of knowledge about and has a lot of interest in. So what the creditors' committee wants to put in there, in the absence of something extraordinary, is going to be fine with me.

And am I right that I've dealt with all of the existing creditors' committee issues?

MR. KAROTKIN: Yes, Your Honor.

THE COURT: Okay, then let's go on --

UNIDENTIFIED SPEAKER: I have a question.

THE COURT: I'm sorry?

UNIDENTIFIED SPEAKER: I'm a creditor and I have an objection.

THE COURT: No, I'm looking for the creditors' committee's position.

UNIDENTIFIED SPEAKER: Well, I could present it.

THE COURT: Okay. Asbestos committee. They're up. Is it Mr. Swett?

MR. SWETT: Yes, Your Honor.

THE COURT: Okay.

MR. SWETT: Good morning, Your Honor. Trevor Swett, Caplin & Drysdale, for the official committee of unsecured creditors holding asbestos-related claims. Your Honor, within

the constraints that you laid out so clearly this morning, I have two points.

THE COURT: Go ahead.

MR. SWETT: The first is that the disclosure statement cannot be approved without setting forth the amount of funding that the asbestos trust to be created under the plan is to receive. The second is that the disclosure statement cannot be approved without the debtors identifying New General Motors as a protected party, if, indeed, that is the intention of the plan. Those are my essential contentions. Both should be resolved under this --

THE COURT: Pause, please, Mr. Swett. You're not the future claims rep. You've got the existing asbestos creditors. I thought I ruled back at the time of the 363 sale that existing asbestos creditors don't have any rights against New GM because there isn't successor liability. Am I misunderstanding my earlier ruling?

MR. SWETT: I would not presume to contradict you on what you ruled. However, I would point out --

THE COURT: So what -- how -- I mean, I can -- I'm sure I'm going to hear from Mr. Esserman or somebody for the future claims rep next, and I understand what the constitution provides and what I said about future claims. But I am having trouble understanding how an existing holder of a known asbestos claim has any interest or rights against New GM.

MR. SWETT: I would put it this way. The allocation of the trust funding as between present and future claimants cannot be negotiated without knowing whether or not it is the intention of the plan to protect New GM. The trust distribution procedures contain -- in the usual asbestos trust contain important architectural provisions that are intended to strike the balance between the extent to which the trust can pay currently and the extent to which it must reserve assets in favor of the future -- so as to not dilute the recoveries of the future claimants. If this plan does not intend to protect New GM, then the negotiation of the proceeds coming out of this liquidation into the asbestos trust is one thing. If, on the other hand, it is the intention of the plan to cut off the future claimants' rights against New GM, the present claimants stand in a different position when it comes to negotiating the allocation of the proceeds out of this liquidation.

THE COURT: Um-hum.

MR. SWETT: It is an extremely material point. It was, of course, key in the Section 363 debates. And it sort of a game of blind man's bluff to put out a bunch of legalese that describes in arcane terms who is going to be protected despite not contributing to the plan.

THE COURT: Now, is this a concern of yours, or is this a concern of a reasonable holder of an asbestos claim? Because I thought I heard Mr. Karotkin and/or Mr. Mayer tell me

that asbestos, present claimants, at least, your guys, would be getting the same amounts as general unsecured creditors, generally.

MR. SWETT: Well, in the broadest terms, that's true. But the amount of funding that must be allocated out of that common fund to the asbestos trust is, unlike some features of the plan, capable of reasonable estimation in a reasonable period of time. So on the balancing of costs and benefits of an incremental disclosure, disclosing the funding to the asbestos trust, which is quite material to members of that constituency, more material to them, granted, than it is to the general unsecured creditors outside of that class because they will have recourse to a bigger pool, but it's highly germane to the vote of a present claimant what the amount to be divided among the presents and futures is. It's the only way they have of even approximating what, at the end of the day, is going to come to them to satisfy their claims.

THE COURT: Um-hum. All right. Anything further?

MR. SWETT: No, Your Honor, I don't think so, other than to say that because the asbestos liability, and thus the funding that must go to an asbestos trust, is amenable to estimation fairly quickly, the disclosure statement shouldn't go out until that estimate is known.

THE COURT: Well, how could the amount be determined fairly quickly, especially in light of the bickering between

you and the creditors' committee on things as fundamental as the protocol?

MR. SWETT: Your Honor, the path towards estimating aggregate asbestos liabilities is a well-trod path. It happens in many cases all the time. That process can be managed by the Court to keep the parties within reasonable bounds and on a timetable consistent with the broader needs of the case to get the plan confirmed and the distributions out there.

THE COURT: Which is why I wondered why I got four letters from the feuding parties, not counting the supplemental letters from the debtor and from the trust over an issue involving a confidentiality step and/or protocol.

MR. SWETT: Well, Your Honor, from our point of view, those disputes stem from the failure of the UCC to confine its information-gathering within limits that are compatible with a reasonably quick, reasonable approximation of the liability. They're being overly ambitious, in our view, of the precision with which they hope to achieve an estimate and to take their leisurely time in arriving at it. We think that properly managed, and with the fair scope of discovery be delineated by the Court after hearing the issues, that process can happen in sixty to ninety days. Ninety days is probably more realistic. But it's not something that requires a long drawn-out post-effective date litigation.

THE COURT: Okay.

MR. SWETT: Thank you.

THE COURT: Well, I see both Mr. Karotkin and Mr. Mayer rising. I'm going to give each of you a chance to be heard. Who wants to be heard first? Be warned; I'm going to give Mr. Swett an opportunity to reply to you both, so I assume that didn't even need to be said.

MR. KAROTKIN: I can be very brief. I think Mr. Swett was referring to a blank in the disclosure statement as to initial cash funding in to the asbestos trust, and that will be filled in with the sum of two million dollars.

THE COURT: Um-hum.

MR. KAROTKIN: So I think that disposes of that. With respect --

THE COURT: Pause, please. To what extent would that be adjusted upward or downward or supplemented by whatever I determined at such time as the asbestos estimation process is completed?

MR. KAROTKIN: It's irrelevant to that, Your Honor. That's basically money to provide for the administrative costs of the trust.

THE COURT: Okay, continue, please.

MR. KAROTKIN: The way the asbestos present and future claim works is at such time as it is allowed, it gets -- that aggregate claim gets a distribution as a class 3 creditor. So an aggregate amount of consideration based on what is

distributed to unsecured creditors in class 3, basically, the securities, would then be distributed to the trust.

THE COURT: In other words, I fix an amount based on the estimation for those unsecured creditors who are asbestos claimants, and then MLC will take stock of a value sufficient to be equivalent to the amount that they would -- that would be allocated to claims in that class?

MR. KAROTKIN: Can I try and state it differently?

THE COURT: Of course you can.

MR. KAROTKIN: When the aggregate amount of present and future asbestos personal claims is either agreed upon or determined by Your Honor --

THE COURT: And you also said future, as well as present?

MR. KAROTKIN: Correct.

THE COURT: Okay.

MR. KAROTKIN: It is an aggregate number for present and future. When that is agreed upon, that is treated as an allowed claim in class 3, which is the unsecured -- general unsecured creditors' class, and that allowed claim in class 3 gets a ratable distribution which goes to the trust on the same basis that any other allowed claim in class 3 gets a distribution. Once it goes into the trust, it's administered by the trust under the trust distribution procedures and claims resolution procedures.

THE COURT: I'm with you, now. Continue.

MR. KAROTKIN: Okay. The other point he raised is to identify New GM as a protected party. And we can do that. As currently drafted, and we will -- as currently drafted, New GM is a protected party. And we -- and to the extent nothing changes between now and when the disclosure statement is approved, we are happy to make that clear. So I think that disposes of that.

And the last question I have for Mr. Swett is I had indicated that we're happy to attach as an exhibit the trust documents, and I would like to know whether he will draft them or we will draft them. And if he intends to draft them, when will we get them?

THE COURT: All right, fair enough. Mr. Mayer?

MR. MAYER: The anonymity protocol is for a later time. My partner, Phil Bentley, is not in the courtroom.

THE COURT: I don't think that's on our calendar until 2 o'clock.

MR. MAYER: Correct.

THE COURT: Although I'm becoming decreasingly optimistic that we're going to be done with this by 2 o'clock.

MR. MAYER: Anyway, we reserve our rights to respond to Mr. Swett's characterizations until that time.

THE COURT: Sure. Mr. Swett?

MR. SWETT: Yes, Your Honor. I thank Mr. Karotkin for

clarification with respect to the intention of the plan, as to New GM. That does, indeed, resolve that question. The trust doc --

THE COURT: I couldn't hear that. After you thanked him, what did you say next?

MR. SWETT: That does seem to resolve the disclosure statement issue as to New GM. We have submitted other points, that I'll just rest on the papers on that sort of surround that issue, but you set the ground rules for what's open for today and I'm abiding by them.

With regard to the trust documents, it would be my expectation that the trust documents would be drafted by the legal representative and the committee. We would undertake that task. It does not take long to set up the basic structure of the documents. However, the trust distribution procedures cannot be completed without knowing what the funding available to the trust is. That's for the following reasons, and this is just an elaboration of, in more detail, of the point I made in my opening remarks. The trust distribution procedures set forth certain mechanisms that are intended to prevent the trust from running out of money and not being able to pay the future claimants as they come on stream equally in relation to creditors at the front end of the queue. That includes what are known as scheduled values for asbestos claims of various categories and average values. The averages are a target that

the trust must meet across all of the claim resolution options available to claimants under the procedures if it is going to maintain the appropriate balance between presents and futures. Those can't be set; that target cannot be set without knowing what the resources available to the trust are expected to be.

Then, of course, there is the payment percentage. The payment percentage is, perhaps, even more important as the mechanism for controlling the balance between presents and futures. And it depends vitally on how much money is available to the trust, what the assets are and what their value is. So we can write the documents in some general sense quite quickly. But we cannot provide the substance of the TDPs without knowing what the funding is going to be.

THE COURT: So you're saying that I've Gordian knot that I can't untie here?

MR. SWETT: I'm urging Your Honor that the prudent thing to do is to bear down on the estimate and get it done before the disclosure statement goes out. And that's --

THE COURT: Well, that ain't gonna happen, Mr. Swett, so why don't you tell me what the disclosure statement needs to do.

MR. SWETT: My contention, Your Honor, is that no reasonable person can -- in the asbestos constituency can cast an intelligent vote on that basis.

THE COURT: Then I guess you're going to have an issue

on appeal. But let's talk about whether you want to put in a paragraph or page or whatever dealing with a disclosure to the affected creditors or future claimants of the risks associated with them not getting everything they're looking for in the claims estimation process.

MR. SWETT: Yes, without waiving my objection, I would undertake to do that.

THE COURT: I never ask people to waive their objections, Mr. Swett.

MR. SWETT: Very well, very well.

THE COURT: I mean, if the debtors wish to hold up the distributions to the other thousands of GM creditors to deal with your needs and concerns, I'll respect their decision. But this cannot be run for the needs and concerns of any subset of the debtors' thousands of creditors. That is not a message solely to you, of course. It's a message to everybody in the room and in the overflow room and on the telephone. But I'm telling you folks the way it's going to be.

MR. SWETT: I fully understand that.

THE COURT: Okay. Okay.

MR. JONES: Your Honor?

THE COURT: Mr. Jones.

MR. JONES: I'm sorry. May I be heard quickly on one quick clarification based on the discussion that just occurred?

THE COURT: Of course you can.

MR. JONES: Thank you. Again, Your Honor. David Jones from the U.S. Attorney's Office, and a number of objectors have expressed concern about uncertain funding levels in various post-effective date or other budgets. Treasury is engaged in discussions, as has been represented, as to where -- what an appropriate level for those budgets will be. Debtors just stated that the asbestos trust would be funded to the tune of two million dollars. I simply want to note that discussions are ongoing with Treasury to try to achieve a sensible and rational and agreeable funding level. And I'm not going to jump up and down or interrupt the flow, but any representations concerning funding that will be provided is subject to successful resolution of those discussions and possible change in light of it.

THE COURT: Yeah, okay.

MR. JONES: Thank you.

THE COURT: All right. I think that the narrow issues insofar as the adequacy of the disclosure statement have been mooted out with the exception of the following. The asbestos committee, the official asbestos committee, present claims, will have the right but not the duty to provide a trust document, if it chooses to, or if it prefers, because there would be so many uncertainties associated with that, it will have the right, if it chooses to do it, assuming it can be done in a timely way, to put in one or more paragraphs -- I'm not

talking about pages and pages, but a few paragraphs that describe, if it wishes, the risk factors associated with people voting on the plan before the estimation proceeding is completed, and or before any rulings on the estimation process are forthcoming. If the asbestos committee elects to avail itself of that right, any of the debtors or the regular creditors' committee will have the right, if either is a mind to, to put in one or more paragraphs of comparable length in response to describe its view of the world concerning the asbestos committee's positions in that regard. This is without prejudice to anybody's rights on the estimation proceeding, on the discovery dispute/protocol dispute that is on the calendar for 2 o'clock -- I don't know when it will be heard now -- or to appeal either the confirmation order or, to the extent that it's appealable, my ruling approving or conditionally approving the disclosure statement. Nobody's expected to waive any rights. But you are to do that which is appropriate to give our creditors the best disclosure we can.

Future claims rep. Is that Mr. Esserman?

MR. ESSERMAN: Yes, Your Honor.

THE COURT: Come on up, please.

MR. ESSERMAN: Your Honor, Sandy Esserman for the future claims representative. I think Your Honor has addressed most of the issues either in your preliminary remarks or just now, and I do not intend to go over them again. I think it is

important to say clearly in the disclosure statement that GM is intended to be -- Old GM, if you will, and New GM are both intended to be protected parties under the asbestos trust, and as long as there's a clear statement to that effect, I think that that goes a long way, and I think Mr. Karotkin intends to do that.

With regard to what Your Honor just said about the trust documents, historically and in other matters, those are usually negotiated between the FCR, the future claims representative, and the asbestos committee, and we would intend to engage in that discussion and negotiation with the asbestos committee, and I assume that Your Honor's ruling did not mean to exclude the future claims representative from conducting those negotiations.

THE COURT: Well, of course, I'm not getting in the way of any negotiations, and my tentative, subject to people's rights to be heard, is that all of the rights and terms of sticking stuff in the disclosure statement that I gave to Mr. Swett would be equally available to you.

MR. ESSERMAN: That's fine, Your Honor. And with that, we're concluded.

THE COURT: All right, Mr. Karotkin, you or Mr. Mayer want to be heard with respect to anything unique to the future claims rep or my tentative on giving him the same rights I gave to Mr. Swett?

MR. MAYER: No, sir.

MR. KAROTKIN: No, Your Honor.

THE COURT: Okay, then the tentative becomes the ruling on that. So you have the same rights that the official asbestos committee has in terms of putting anything in the disclosure statement if you choose to do that, Mr. Esserman.

MR. ESSERMAN: Thank you, Your Honor.

THE COURT: Okay. United States trustee?

MR. MASUMOTO: Good morning, Your Honor. Brian Masumoto for the Office of the United States Trustee. As indicated by Mr. Karotkin, all of our issues have been resolved, but I just would like to make two comments. One is that we did have an issue regarding the identity of post-confirmation management. I believe that's been addressed by the Court earlier, so we will abide by that ruling.

In addition, as indicated in their response and chart, issues regarding releases, exculpation, and so forth, the substantive issues are reserved for confirmation.

Thank you, Your Honor.

THE COURT: Very well. All right, the Appaloosa and the other hedge funds that have Nova Scotia Bonds.

MS. MITCHELL: Nancy Mitchell from Greenberg Traurig on behalf of the Nova Scotia bondholders.

THE COURT: Right. Pause. Was that Mitchell?

MS. MITCHELL: Mitchell, yes.

THE COURT: Go ahead, Ms. Mitchell.

MS. MITCHELL: I was in line downstairs, so I didn't hand in my business card. I apologize.

THE COURT: No, that's all right. Somehow, I thought we'd take enough time so that we could get something useful while everybody waited on line.

MS. MITCHELL: I appreciate that.

THE COURT: Go ahead. Unfortunately, you may not have heard your preliminary remarks.

MS. MITCHELL: I did.

THE COURT: Okay.

MS. MITCHELL: And I'm going to be short. I believe, Your Honor, we had a number of issues, some of which might have fallen into the issues that you described, others of which were clarifications to the plan and disclosure statement that, frankly, were just confusing. I believe, subject to Mr. Karotkin circulating revised language, that we have, in fact, dealt with all of our issues with the debtor. So we're just waiting to see the revised language from Mr. Karotkin, and I think we're going to be fine.

THE COURT: Okay. Any need for you to respond, Mr. Karotkin, or anybody else in the case?

MR. KAROTKIN: Ms. Mitchell is correct. We've had various discussions. And just so Your Honor knows what we've agreed to do with respect to both the unsecured creditors'

committee and the, what I'll call globally, the Nova Scotia, is they've asked for certain clarification under the plan and disclosure statement as to defined terms to make sure it's clear, and obviously, we have no objection to that. And both sides have essentially asked us to state their positions with respect to the litigation, and we've agreed to do that. And it's just working out that language.

THE COURT: You're going to state it for them?

MR. KAROTKIN: No, no. We will -- no, they have drafted the language.

THE COURT: And you're going to stick it in.

MR. KAROTKIN: And we will put it in.

THE COURT: Okay. All right, did I see Mr. Golden back there? You have the Nova Scotia Canadian representative?

MR. GOLDEN: Yes. Thank you, Your Honor. Daniel Golden, Akin Gump Strauss Hauer & Feld, counsel for Green Hunt Wedlake as trustee for the Nova Scotia Finance Company.

Your Honor, we did hear your opening remarks, and we've heard them in many other cases. I think we tried very hard to confine our objection to the bounds that Your Honor usually finds acceptable with respect to disclosure statements. We did, in fact, give the debtors detailed proposed language that would resolve our claims, and we have, over the last ten days, been discussing that language with Mr. Karotkin and his colleagues. I can confirm what Mr. Karotkin just said. We

believe that we will be fully resolved based upon the proposed language we gave to the debtors and the proposed language that I assume that the creditors' committee will give to the debtors for inclusion in the disclosure statement. We await to see that final language, but I believe, as I stand here today, our objections will be substantially, if not fully resolved.

THE COURT: Fair enough. Good.

All right, does the U.S. government need to be heard on any of this stuff on the disclosure statement issues?

MR. JONES: Your Honor, I don't think I have anything else to say, except other than with respect to the avoidance action, which simply to say that disclosure of all applicable contingencies is the way to go. Other than that, I think we have nothing to add.

THE COURT: All right. I will now hear any nonduplicative issues that don't deal with people's private needs and concerns and that are consistent with my opening rulings. Anybody want to be heard on that?

I have two people. Yes, sir. Come on up, please.

Unfortunately, I only know the main players in the case, so I don't know everybody.

MR. LINDENMAN: Certainly, Your Honor.

MR. KAROTKIN: Your Honor, may I interrupt? I'm sorry.

THE COURT: Yeah, go ahead, Mr. Karotkin.

MR. KAROTKIN: Just to resolve -- there was an objection -- I'm sorry. Let me just -- there was an objection filed by Winkelmann Sp., which is the first one on the chart, and we've agreed with counsel to state on the record that neither the plan nor the disclosure statement limits Winkelmann Sp. z.o.o.'s right to set off post-confirmation to the extent that such right has been asserted in Winkelmann Sp.'s proof of claim and has been properly preserved.

THE COURT: Okay.

All right, yes, sir.

MR. LINDENMAN: Thank you, Your Honor. Eric Lindenman from Harris Beach for the Town of Salina. We'll be very limited, Your Honor, in light of the debtors' response filed yesterday.

THE COURT: Yeah, I read your objection and it sure looked like you had private needs and concerns, Mr. Lindenman.

MR. LINDENMAN: Not at all, Your Honor. This is very simple. For the most part, the references made in the response will address many of our concerns with regard to amending the disclosure statement to better reflect and include documents that will hopefully allow us to determine our claim class. I believe -- I'm assuming that the documents they propose to add as part of the amended disclosure will permit us to -- and not just us, but other similarly-situated municipalities, governments, and whatnot, to continue whether it's a class 3 or

a class 4.

The only other issue, Your Honor, and while I understand it is somewhat of a parochial issue, I believe it does relate to disclosure, rather than confirmation, because I can't evaluate my status and determine whether ultimately this is something that is even -- I hate to say even -- confirmable, but the inability of the Town of Salina or any county or other association from accepting stock in a public company is generally prohibited by the New York State constitution. And I think if this is part of the process by which my claim, if I am a class 3, to receive as part of a distribution the shares of stock or the trust unit, I think there should be disclosure as to how exactly I can accept that, given my clients and other similarly-situated municipal entities accepting stock.

Those are my issue, Your Honor. I think that there can be and should be disclosure as to how it is that a New York State municipality or government entity can accept stock as part of its claim.

THE COURT: Well, before I express any views I might have on that, I'll give the debtors and/or the creditors' committee the opportunity to comment, if they wish.

MR. KAROTKIN: Your Honor, Stephen Karotkin. I think we've addressed the disclosure issues with the supplements we've agreed to make as reflected on the chart and as I indicated earlier.

With respect to the issue of the inability of the municipality to accept securities, I suppose an easy solution to that would be for, at such time as their claim is allowed, arrangements could be made with the Guk trustee to liquidate the securities prior to distribution and give them the proceeds. That, to me, would be a pretty easy solution to that issue.

Just to be clear, I believe that the claims that Salina has, the counsel is referring to, are class 3 general unsecured claims, so there's no misunderstanding.

THE COURT: I also assume they would be able to get a clue when they got their ballot?

MR. KAROTKIN: Sure, yes, absolutely.

THE COURT: All right.

Mr. Mayer, do you want to supplement what Mr. Karotkin said?

MR. MAYER: No, Your Honor.

THE COURT: Mr. Lindenman, any reply?

MR. LINDENMAN: While the concept of a pre -- I guess the liquidation of the shares is potentially viable -- I would still have to look at the particulars -- to my mind, there should be at least some disclosure in the disclosure statement as to such an option, such a process, rather than at the time of distribution, partly because it's just not clear at this point if that's viable because it certainly would affect my

ability to vote one way or the other.

THE COURT: All right, here's what we're going to do, folks. The debtors are going to add a paragraph to the disclosure statement that says, in substance, the debtors have been informed that some municipalities have reservations as to their ability, under applicable state law, to accept securities or stock or whatever the words Mr. Lindenman gives you are. The debtors can provide no assurance that -- if it's true, although the debtors are willing to work with municipalities to deal with their concerns to the extent practical, the debtors can give no assurance to those municipalities that the municipalities' concerns can be satisfactorily addressed. And if you guys can make a deal, God bless you. But that is the disclosure statement for today.

MR. LINDENMAN: Thank you, Your Honor.

THE COURT: If you want to work with Mr. Karotkin to fine tune that language, anything true to that concept is okay with me.

MR. LINDENMAN: All right, thank you, Your Honor.

THE COURT: All righty.

Yes, sir.

MR. MENDEZ: Your Honor, I'm Luis Antonio Mendez.

THE COURT: I'm sorry, could you speak closer to the microphone, please, sir?

MR. MENDEZ: Sorry, sure. My name is Luis Antonio

Mendez (ph.), and I represent the County of Onondaga. Actually --

THE COURT: Onondaga County, upstate New York?

MR. MENDEZ: Onondaga County, upstate New York. We have a few issues that we believe go to the heart of the disclosure that really have not been fully addressed by even the disclosure today that sometime yesterday an environmental response trust was, in fact -- or, response document was, in fact, finalized, which document, as the United States has stated, now must go through the process of public review and comment before it can actually be presented to a Court and attached to a revised disclosure statement. We are gratified that the -- that there is, at least, such a document out there in the wild and hope to be able to view it. But nevertheless, the County's claims really cannot be addressed in terms of whether to withdraw its objections to the disclosure statement as it now stands.

THE COURT: Mr. Mendez, what are your complaints about the disclosure?

MR. MENDEZ: First that it -- when the disclosure was filed and as of the -- when the disclosure was filed, at the time that we filed our objections, and at the time that the reply was filed to those objections, the underpinnings of the environmental response and the Guk trust that addressed other environmental issues were nowhere to be seen. And as a result,

applying the rule that was so cogently laid out by the Court this morning, no reasonable investor looking at a prospectus that offered a plan without its central underpinnings would bite. That, we hope, will be resolved, but I would urge the Court that rather than conditionally approving the disclosure statement, at least with respect to the environmental claims, that that portion of the disclosure be reserved until the plan is actually reviewed, commented on, and it's an approvable form, and then can be appropriately appended to the amended disclosure.

THE COURT: Mr. Mendez, with respect, I'm going to tell you the same thing I told Mr. Swett. That's not going to happen. I am going to tell the debtors that which is necessary to implement my rulings, and they're going to do it.

MR. MENDEZ: Okay.

THE COURT: If they fail to do it, I'll leave for another day what would happen if the debtors were so dumb as to disregard my instructions. But I am going to be ruling today on that which is necessary to make this a disclosure statement in compliance with 1125 of the Code.

MR. MENDEZ: Then let me --

THE COURT: Now, that's why I asked you, is there anything that is necessary for the creditor community, generally, as contrasted to Onondaga's private needs and concerns, where you can tell me that there is anything in the

disclosure statement that affects everybody and not just you that they haven't done?

MR. MENDEZ: I respectfully believe that Onondaga's claims are not private concerns. They are concerns that affect half a million people in the State of New York. They are concerns that arise out of the debtors' contamination of large stretches of a creek that has been rendered useless for recreation purposes and otherwise, and this will lead into my -- our additional problem.

Assuming that the debtor is trying and will ultimately prevail in its attempt to convert a statutory obligation to remediate that contamination which it has left behind, the third issue, and we appreciate that there may be elements of confirmation here, as well, but the third issue that we have is the valuation of what debtor is going to propose, since we don't have the trust documents in front of us, in terms of converting that obligation to remediate into a cash or some other substitute that would allow that remediation to go forward. Those are our two principal objections. We are cognizant of the limitations that have been placed on the proceedings and are willing, of course, to abide by them.

THE COURT: Okay. Is there a desire to respond before I rule on this?

MR. KAROTKIN: No, sir.

THE COURT: All right. No. We're not up to that yet.

To the extent, which is one hundred percent, that I'm asked to deal with the adequacy of a disclosure statement, the Onondaga objection is overruled. Nothing in a ruling on a disclosure statement affects, in any way, the underlying obligations that any company in a Chapter 11 case on my watch has to comply with the environmental laws or to pay damages for its failure to do so. To the extent that Onondaga can't settle its environmental issues, though I sense that many upstate municipalities, or tribes, as well as the U.S. government have done so, it will be free to do what it sees fit. But that's nothing to do with this disclosure statement issue, and this is not an issue of enough materiality to the remainder of the GM -- Old GM creditor community to require anything to be added to the disclosure statement. Hence, as I said at the beginning, the objection's overruled.

Next objection. Ma'am, you want to come up, please?

I have a message that was passed to me by my law clerk that some people in the overflow room are having a hard time hearing the attorneys and that they should speak into the microphone.

MS. LISENKO: Good morning, Your Honor. My name is Marianne Lisenko, and I'm a creditor. I've read quite extensively all the documents that have been filed. My docket number, by the way, is 7071 where I wrote my first objection in regard to the duplicative claims and 7344, for those who

haven't read it, you could read my objections in more detail. Right now, I'll try to be as succinct as possible, and that is my first objection to the disclosure statement that it's written in a most redundant, evasive, and unclear blurted way possible. I believe, as a creditor, as part of the public, we do want to be able to read the documents that the courts produce. All over the world, everybody looks towards America as the land of the rule of law, and if we can't read a document that's so evasive and contradictory in some instances, so that's my first objection.

When I read the indenture, the 1990 indenture, regarding the debt securities that were issued, there were clauses regarding immunity of all directors. That would be my second objection that there seems to be kind of a jackpot justice. I think some people might have read about the criticism in the media right now about the types of expenses that are being wasted in the courts, and that obviously people are not receiving due remedy for their suffering, whereas lawyers and the legal administrative community is really raking in a jackpot. Thirty-three billion was mentioned in the disclosure statement, yet nowhere, we had 500 million going to the remedial -- environmental remedial trust, yet nothing was said -- today, I heard about the -- well, the asbestos trust, two million; 28,000 people have filed claims. I don't know how serious these claims are and, you know, how much really they've

been claiming in the courts. So as much objection as I have to this whole proceeding to begin with, because it seems to be an abuse, really of the bankruptcy proceedings, as I mentioned in my first objections, General Motors is a very, very successful, admired world-wide company. The disclosure statement does say that 150 billion in revenues have been -- well, these are the revenues that come in through the sales of close to eight to nine million vehicles a year, and even this year -- I made a little mistake in my objection, there, regarding the last report that says it was 2.2 million, but that was only for the quarter. So it seems even for this last year, it would still be operating capacity of ninety-three, full capacity, really. So revenues are very good. Where, my question is, did all that money go? Expenses were also shown in the last report as fairly reasonable. So again, the question is, why -- if there's thirty-three billion, the disclosure statement says there is pre- and post-petition expenses. My question is, where do these thirty-three billion go, and why can't we somehow equitably divide this money, because there is enough money, from what I see. Sixty billion, the government gave, the shares -- that was probably one of the problems, that the shares were diluting the value of the company. Went from, I understand it, from 1.5 billion shares that were being sold, they eventually, when you dilute that much, and the shares, obviously, become worthless, and all these fees, obviously,

being collected by all these finance companies that are selling these shares --

THE COURT: All right, pardon me, ma'am. I was very, very patient, and I let you speak for a long, long time. But I have hundreds of people who are participating in this hearing whose presence is costing their clients a lot of money. And I'm going to need you to finish in the next two minutes --

MS. LISENKO: Okay, so --

THE COURT: -- and to limit --

MS. LISENKO: -- again, fees --

THE COURT: -- no --

MS. LISENKO: -- bloated fees --

THE COURT: -- ma'am -- ma'am, you cannot speak over me.

MS. LISENKO: I'm sorry.

THE COURT: Concerns as to how GM got into its difficulties, bloated fees, matters as to management are not matters that I can deal with on a disclosure statement. Take your next two minutes to tell me anything that you want to identify beyond what you already said concerning the adequacy of the disclosure statement.

MS. LISENKO: Well, the main point, of course, is that there's no -- no sums, no totals given to all these different trusts that are being set up. The avoidance action, the term loan, the avoidance action is not explained. What is it about?

I'm also objecting to the action against BMW that's restricted. You can't read what is this action about. Is this regarding the term loan action or not. And of course, I object to these future loans. In your sales, when there was objection to the master sale and purchase agreement, you, yourself, said that this is a class 6 standing in this case. So there's also fees, they're adding up. And it doesn't look like, from what I understood, that these thirty-three billion are going to go to anybody except the lawyers. So I would like that to be clear in the disclosure statement, and I wish somebody could write something that everybody understands that's succinct, clear, and substandard, especially the numbers. That's sort of all I have to say. Thank you very much.

THE COURT: Thank you.

Is there a desire by anybody to respond?

MR. KAROTKIN: No, sir.

THE COURT: Okay. Of the various things that were said, one raises an issue as to disclosure statement adequacy, which is that it is redundant and that it is difficult to read. Both of those objections happen to be so, but with that said, they're not legally cognizable objections. Frankly, folks, if I were the United States Congress, I would put in a rule that says that disclosure statements have to be drafted in plain English. But I'm, to state the obvious, I don't write the laws. I enforce them. And particularly in business cases

where you have billions of dollars of debt, it's understandable that people are going to write things like corporate lawyers always do. If -- I could encourage people to write in plainer English, but I'm sure it would be a futile exercise.

Although there are undoubtedly things that appear more than once, the fact is it would be more expensive to fix it than it would be to make them go through the document to take it out.

The remaining objections deal with disappointment with how GM got into its mess and compensation of officers and directors and of professionals for which we have other mechanisms to deal with them, in the case of professionals, and a limited ability to deal with them, at least on a disclosure statement hearing. For those reasons, that objection's overruled.

Now, within the confines of my initial rulings at the outset of this hearing, do I have anything else?

No. Yes, sir.

UNIDENTIFIED SPEAKER: I wasn't here at the original hearing, but I'd like to make a statement.

THE COURT: You can come up to a microphone, please, but I will require that your remarks be nonduplicative, and that they be consistent with the rulings that I announced at the outset of the hearing.

UNIDENTIFIED SPEAKER: I'm sorry, Your Honor. I

apologize for being late. But I believe that the U.S. government corrupted the bankruptcy process by stepping in and changing the process. The system is supported -- supposed to work when the company goes bankruptcy that the business is sold off and as many parties as satisfied as possible. The common stockholder loses out and the second, the preferred stockholder may get some value, and the bondholders, which I am, are usually considered to be pretty solid because that's an investment that shouldn't be fooled with. The U.S. government stepped in and bypassed this system. If private industry and money would have them allowed to do this without this process, the General Motors would have been bought as a bankrupt company, unions would have lost what was not theirs and would make -- there would be more people working today because private enterprise would have bought and rehired at a different process. The union -- I believe the government stepped in and gave unions more representation, money-wise, because of a 2008 elections thing, backing.

THE COURT: Forgive me, sir. This is a court of law, and we don't get involved in politics, here. And the issues, to the extent they were legally cognizable, were addressed last June and addressed in the decision that came out already and are no longer appropriate for discussion. I did not, at the outset of this hearing, foreclose pro se objectors from being heard, but I must, in fairness to the thousands of other GM

creditors, limit the discussion today, with all due respect -- if you have problems, I'm not going to take away your votes as a citizen to vote next month -- to something that I, as a judge, can deal with, and in particular, that I can deal with in a hearing on a disclosure statement.

Do you have anything that you think that the disclosure statement fails to give the reasonable creditor that it doesn't already have?

UNIDENTIFIED SPEAKER: No, Your Honor. I just believe that the process was not followed in an order that it should have been in a regular bankruptcy.

THE COURT: Well, that issue has already been ruled upon, sir. Thank you very much.

UNIDENTIFIED SPEAKER: All right, thank you --

THE COURT: Have a good day.

UNIDENTIFIED SPEAKER: -- for letting me be heard.

THE COURT: All right. The disclosure statement is conditionally approved. Mr. Karotkin, you and you designees are going to implement all of my rulings and give the other stakeholders in the case who had an opportunity to put in their own submissions a reasonable time to do it.

What's your recommendation as to how we should proceed next?

MR. POTTER: Your Honor, this is Jim Potter representing the State of California, Department of --

THE COURT: Wait a second. Who is this speaking, and what do you want to be heard with respect to?

MR. POTTER: My name is James Potter. I'm with the California Department of Justice, and if I may, I'd like to be heard on the disclosure statement. I understand the Court's limitations on what can be brought up.

THE COURT: Go ahead, Mr. Potter.

MR. POTTER: Before I do, I'm covering for my colleague who had another hearing. My application pro hac vice is pending.

THE COURT: It's granted. Go ahead.

MR. POTTER: Thank you. Three quick points. First, the State of California, like the New York municipalities, cannot accept stock. My understanding from your earlier direction is that the disclosure statement will say that, basically, neither the Court nor the debtors can guarantee, therefore, that we'll get any distribution because under our law, as well, we're not allowed to accept stock. And that -- if that's all that says, it will put us in a very difficult position when it comes to votes. And I guess I'd ask for, at minimum, the opportunity to join in the negotiations about how they draft that statement regarding the accepting of stock.

THE COURT: Well, that isn't a disclosure statement objection, but if you, along with the other -- I think it was represented by Mr. Lindenman and Harris Beach -- want to see if

you can work out a mechanism to meet your needs and concerns, of course, I welcome that.

MR. POTTER: Okay. And if the disclosure statement makes that clear, then it puts us in a much better position when we have to vote yea or nay. If the disclosure statement is unclear, then we may be hampered in ability. Thank you.

THE COURT: Very well. All right.

MR. POTTER: The second issue is, and I'm not too sure if this is more of a statement or a question, there seems to be a conflict between the disclosure statement as it stands and the environmental trust. The disclosure statement puts class 4 at 536 million. The environmental trust indicates that the on-sites will have costs of 641 million. And that doesn't include the priority auto of the sites. Is -- and will, in going forward, will the disclosure statement be made to conform to the environmental trust? That's really a discrepancy of over a million dollars (sic) not even including the priority auto sites. And while, according to disclosure statement, the environmental trust governs, that would make it very hard for us to evaluate the disclosure statement. So again, I would ask that the Court instruct the debtors to make, as part of this ruling, to ensure that the disclosure statement conforms to the trust agreement -- the environmental trust and any other trust agreements that are already outstanding.

THE COURT: And is this supposed to be something that

affects the entirety of the Old GM creditor community, or is this for your own private needs and concerns?

MR. POTTER: I think it affects the entire of the unsecured creditors because there seems to be a discrepancy in where well over a hundred million dollars is going to come from, and it's our concern that it may end up coming from class 3 of the unsecured creditors. We are not a party to the -- California is not a party to the environmental trust since we don't have any of the auto sites.

THE COURT: All right. And did you say you had a third issue, Mr. Potter?

MR. POTTER: Yes, just what was included in our objection, I don't think it's been addressed today that the disclosure statement discussions of substantive consolidation has a number of conclusions, including that no creditor will get paid less based on the substantive consolidations than that creditor would get if there were not consolidations. And if that's true, we have no problem, but the disclosure statement does not include anything that allows us to evaluate whether that is, in fact, accurate, and we believe the disclosure statement is inadequate for that reason.

THE COURT: All right, is there a desire to respond?

MR. POTTER: Thank you, Your Honor.

THE COURT: Very well, Mr. Potter.

MR. KAROTKIN: Stephen Karotkin for the debtors. I

think with respect to the first point that was made, we will, as I said, we will appropriately amend the disclosure statement to reflect any additional material terms of the environmental settlement that needs to be disclosed, as well as make sure it's accurate. And I think that addresses his first comment.

As to substantive consolidation, we believe there's sufficient information for disclosure statement purposes, and to the extent that counsel for California is unhappy, he can object at confirmation.

THE COURT: All right. I'm going to overrule these objections, Mr. Potter. I didn't hear you have any facts to say that you think that substantive consolidation is inappropriate, but if you do, you can raise them at confirmation.

MR. POTTER: Thank you, Your Honor.

THE COURT: The -- to the extent that there's an objection to the accuracy of the disclosure statement in terms of its discussion of the environmental trust, I haven't heard any specifics, other than the seeming difference in numbers, which may or may not be an apples and apples comparison. But Mr. Karotkin, you're to look at that, and if the numbers don't fit properly, you're to fix them.

MR. KAROTKIN: Yes, sir.

THE COURT: All right. Now, I think we're done on this issue. And the disclosure statement will be conditionally

approved, and you're to make the changes required to implement my rulings or to accept the language provided by others to do so.

And now I'll ask you the question that I thought I was about to ask before or that I did ask before, Mr. Karotkin. How do you recommend that we mechanically provide for your taking the various inserts, your doing the things necessary to implement my rulings, and take it from here?

MR. KAROTKIN: There are, obviously, a number of things we have to do. We are in the process of doing that. My suggestion, Your Honor, is that we will commence that process; to the extent we need information from other parties, we will press them to get that information so we can proceed as expeditiously as possible. We still do need to resolve the budget issues. We will have to do appropriate amendments to the ballots, appropriate amendments to the order. So there are a number of things to do over the next several days, and I think what -- when we get all the information and we have resolution of issues, we will circulate the revised disclosure statement among the objecting parties.

THE COURT: Yes, not everybody.

MR. KAROTKIN: Not everybody; that's way too expensive. And I assume that you would like us to include all sixty objecting parties? Or I take your guidance on that. Or should we limit it to the substantive objections that were

heard -- the parties heard today?

THE COURT: Let's do it to all objectors.

MR. KAROTKIN: Okay.

THE COURT: And although I may not have gotten formal objections from the -- a few of the other key parties, like Export Development Canada or anybody else, give them a copy of the new disclosure statement, also.

MR. KAROTKIN: Yes, we would do that anyway. We will endeavor to circulate that as soon as we can. It's a little hard for me to predict exactly when that will happen, and I would ask the Court if we could get a holding date in case we need to come back to have anything resolved.

THE COURT: I wonder if it would be better to do it by an on-the-record conference call.

MR. KAROTKIN: We could do that, Your Honor. The only -- I guess the only thing I'm concerned of is -- I'm concerned about is to the extent that we adjourn this hearing, we need to make a formal announcement of that at this hearing so people are on notice. That's all.

THE COURT: Well, you want to -- actually, we've been going for two and a half hours without a recess anyway, or three and a half. I've lost track of the math. If you want to take a recess, and then we'll see what we can do thereafter. I guess the question is what kind of zone do you want from me to try to find you a holding date.

MR. KAROTKIN: Well, we can dis -- I can discuss this with my colleagues. I have my own personal preferences since I'm going to be away next week, but I don't want to let that interfere with the process.

THE COURT: I assume you're going to be making the folks back in your office work while you're away, so --

MR. KAROTKIN: I'm going to try to.

THE COURT: -- you'll then, hopefully -- I'm sorry?

MR. KAROTKIN: I'm going to try to. I only have limited power, you know.

THE COURT: Actually, I never thought at your firm you had any difficulty making your associates work. But why don't you talk to the players in this and to whoever's going to have to implement what we're going to need to implement, and I was prepared to take only a ten-minute recess, but I don't think we can go all day without a lunch break, anyway. So would it be helpful for you to do caucusing during the lunch hour and also for me to talk to my deputy over my lunch hour as to what we can give you in, say, the period from about a week from now to whatever you think you would need on the other side?

MR. KAROTKIN: Sure.

THE COURT: And make an announcement after our lunch break?

MR. KAROTKIN: That'd be fine. Thank you.

THE COURT: So shall we reconvene at a quarter after

1? Or is that too tight?

MR. KAROTKIN: I think that's fine.

THE COURT: All right, then we're in recess until 1:15. The next matter, for your planning your lives, will be the implementation of what I just discussed with Mr. Karotkin, then the creditors' committee/U.S. government dispute on the superpri, and then any remaining GM matters -- I don't know if we have them -- and then at 2 o'clock, we'll have the -- or as soon thereafter as counsel can be heard -- the dispute on the asbestos protocol.

We're in recess.

MR. KAROTKIN: Thank you, sir.

(Recess from 12:07 p.m. until 1:15 p.m.)

THE COURT: Have seats, please. Okay, Motors Liquidation Company. Let's button up any open issues vis-a-vis disclosure statement, and then we'll go on to the creditors' committee's motion on the DIP order.

Mr. Karotkin.

MR. KAROTKIN: We're still -- Treasury is still waiting to hear back on a date that makes sense to them. We were targeting November 9th, but if we could wait a few minutes to hear back from Treasury on that date?

THE COURT: Okay. I don't have an objection to that, but I'd like to be able to usefully use the time we have on other stuff.

MR. KAROTKIN: I think we can move forward with the other stuff.

THE COURT: All right.

MR. KAROTKIN: I just have a question. I don't know whether Your Honor has thought about how long a solicitation period you believed was appropriate in view of the number of people involved.

THE COURT: I want to get a recommendation from the major constituencies on that. And I need to get my arms around the extent to which I have logistic issues, either because of the size of the body to be notified or where they might be located or anything else.

MR. KAROTKIN: There certainly are logistical issues. There are about two million people that have to get notice. Not that many people, of course, vote, because shareholders are not voting. And there are Eurobond issues as well. We were contemplating, Your Honor, something like about sixty days from the date that we mailed, I think.

THE COURT: Mr. Mayer, a lot of the folks are going to be in your constituency. Can I get your perspective?

MR. MAYER: Certainly, Your Honor. Just one second. If I may confer with the indenture trustee's counsel, probably most directly in touch with large numbers of small holders.

THE COURT: Sure.

MR. MAYER: Sixty is fine with us, Your Honor.

THE COURT: Okay.

MR. KAROTKIN: But again, I don't think you have to decide that today.

THE COURT: All right. Sixty doesn't offend me. I take it what you're talking about, though, is the time that they're going to have to vote. Am I correct on that?

MR. KAROTKIN: No, I was talking about the time from mailing to the voting deadline.

THE COURT: How would those differ?

MR. KAROTKIN: Um --

THE COURT: Oh, you mean it might be shortened by the time that it would take the envelope to get to them?

MR. KAROTKIN: Yes.

THE COURT: But I guess what I was driving at was in contradistinction to the date upon which we'd be setting the confirmation hearing, and when objections to confirmation would be due --

MR. KAROTKIN: Right.

THE COURT: -- since I suspect you and maybe other folks would want the opportunity to reply --

MR. KAROTKIN: Yes, sir.

THE COURT: -- to any objections. And I'm going to need time to read the stuff. And if it turns out to be requiring an evidentiary hearing, we've got to allow for time for me to get direct testimony declarations, and to the extent

applicable, expert reports.

MR. KAROTKIN: Well, I think that, obviously subject to Your Honor's -- once we finalize the disclosure statement and we're prepared to have an order entered approving it, the proposed order sets forth all of those dates. And we can fill them in at that time, with the -- obviously, the input of the parties.

THE COURT: Um-hum. Anybody else want to be heard on that? Because I assume that you're going to have a little bit of a dialogue on that between now and the time the disclosure statement's finalized.

MR. KAROTKIN: Yes, sir.

MR. MAYER: Just one thing, Your Honor. I'm sorry, Mr. Karotkin, did you mention record date, because that's going to be important? What date would you anticipate being the record date?

MR. KAROTKIN: I think we had a proposed record date in our motion, I just don't recall, Mr. Mayer, off the top of my head. And we're certainly -- we certainly understand we ought to be working with the trustee to make sure all of that works properly.

MR. MAYER: We can do this offline. Thank you, Your Honor.

THE COURT: Do we have one indenture trustee or two?

MR. MAYER: Two, Your Honor, I believe.

THE COURT: Yeah, I seem to remember that from last June.

MR. MAYER: Oh, actually, I misspoke. There are two on the committee, and then there's the Nova Scotia indenture trustee. So I guess that would make three all together.

MR. KAROTKIN: It's a fiscal paying agent, it's not an indenture trustee, for the -- for a couple of issues.

THE COURT: Okay. All right. What I'd like you to do is to focus on this while you're doing the final implementation of my ruling and to see if you can come up with a joint recommendation on all of the dates.

MR. KAROTKIN: Very well, sir.

THE COURT: Obviously it'll have to be subject, a little, to both my calendar and to my ability to read stuff. And obviously, if you can make this case be wholly consensual, or wholly consensual as amongst the major constituencies, then it places less pressure on me in terms of reading stuff than it would if I have still another contested confirmation hearing.

MR. KAROTKIN: Yes, sir. And that certainly is our goal.

THE COURT: Okay. All right. Fair enough. Are we now ready to deal with the creditors' committee's motion?

Okay, I guess everybody's already up there. I have a couple of preliminary comments. Just pause for a second.

(Pause)

THE COURT: All right, folks. I assume, I'll hear from you, Mr. Mayer, and you, Mr. Jones. But while you'll make your presentations as you see fit, I have the question to both of you, but on this one, mainly to Mr. Mayer. Help me understand what the creditors' committee contends Treasury has done to date that is violative of the DIP financing order, or whether the contention is not so much that it's violated the order, as I know, obviously, you didn't ask for contempt, but that puts you in fear that they will in the future. Or is it that you think that they're going to act in a way by which either the order, when implemented or its legislative history, if found to bind or estop the government would then cause you to win any dispute with the U.S. government?

And what I would like each side to address, in addition to what's already on your outlines, is whether in substance I'm being asked to issue a declaratory judgment. Because it's arguable that this case has similarities to a matter that I -- actually, two matters that I dealt with in Adelphia, one on the construction of an X clause, and one in connection with an insurance policy's coverage issue.

I well understand why the creditors' committee cares about this issue. But like a lot of the Article III courts sometimes do, and spend unbelievable amounts of time addressing, I wonder whether there are jurisprudential constraints that I have on me in dealing with the creditors'

committee's motion today. And that's what I would like both sides to address.

I think I understand the merits, but frankly, my more fundamental concern is whether I should today be getting to the merits or not. So Mr. Mayer, do you want to take the lead, please?

MR. MAYER: Yes, Your Honor. The history of how this dispute came to our attention is set forth in the papers, so I won't go over the phone calls, the e-mails, the development of why we're here.

Your Honor, we believe that the orders that this Court has entered and the agreements the Treasury has signed state unequivocally that Treasury has no interest in this lawsuit. Treasury has done several things which we believe violate those orders or show that it will violate those orders. First, in addition to calling us up and saying that they have an interest in it, which I don't know would rise to that level, they filed a reservation of rights with respect to an ownership of that lawsuit, which believe has no foundation.

Second, they went to the debtors and they asked the debtors to change the plan from the way it had been for some time, where interests in this lawsuit would be distributed to unsecured creditors. And that was put up for adjudication by this Court.

Your Honor, we didn't pick this fight. The plan

itself contemplates that this Court will make a determination of this matter. We brought on this motion as the most expeditious way of doing so. Treasury has invited this Court to rule. And that is why we're here asking you to do so.

We believe that is either a violation of the agreements that they signed saying they had no interest in the lawsuit, and the orders that have been entered saying that they have no interest in the lawsuit. They basically said the lawsuit doesn't go -- could go to Treasury unless they cut a deal or Your Honor decides otherwise. I had some difficulty wrapping my head around that, and I still do.

Now, in terms of what else is here from a jurisprudential basis. Your Honor, Treasury's argument to the extent I understand it, is that they may not have a lien, and they may have given up recourse to the asset, but hang it all, they still have that superpriority claim, and that claim's got to be paid by the effective date. Well, we don't think there's a basis for that either. We think Treasury is asserting a right they simply do not have. We think they agreed that their superpriority claim wouldn't be paid on the effective date. They certainly agreed to that without any escape hatch in the DIP agreement that Your Honor approved by order July 5th.

As Your Honor knows from our papers, in between the time that you approved the DIP agreement and the time this deal closed, precisely about six hours before closing, Treasury

insisted on the reinsertion of a clause which gives them the right under a DIP loan agreement that has never been filed and has never been approved by this Court, to insist on payment if the plan is not reasonably acceptable to them. And I stand here reluctantly to confess, as we did in our papers, we agreed to it. It was two in the morning, the closing was at six. But it required them to be reasonable in what consent they exercised with respect to a plan.

Your Honor, we're about to go out with a disclosure statement on a plan of reorganization, which, if Treasury finds unacceptable, cannot be confirmed, because there's a billion-175 due in cash on the effective date, assuming that that clause of the DIP loan agreement, which, as I said, has not been approved by this Court -- is given effect.

This needs to be determined, otherwise there is no plan in this case. I don't know whether that constitutes a confirmation objection. I hope not. I want this plan confirmed. I think Treasury is asserting a veto right they do not have. But I think, from jurisprudential considerations, yes, I think Your Honor -- Treasury has invited Your Honor to rule. This is a ruling that must be made before we get out of this case. It's as ruling that, in my view, must be made before the hearing on summary judgment on November 1. If we don't own this lawsuit, Your Honor, we're not pursuing it. It costs us money if we win.

There's a billion-five additional claims that get created. This is assuming we win. For all I know, Your Honor will rule against us when my co-counsel argues the case. For all I know, the Second Circuit -- because I suspect it goes there -- it's a billion-five at issue, it's an interpretation of the UCC -- could go one way or the other. But there's a lot of money at stake.

I misspoke, by the way in the morning session. My conflicts counsel has informed me that the number of holders who are defendants in this isn't 40, it's 400. So there's no real way to settle this thing. This thing -- this lawsuit is going to get adjudicated and somebody is going to be out a billion-five or not, as the case may be. But we need to know. Because if we don't own this lawsuit, Your Honor, we're not pursuing it, and no one is.

And so November 1, I don’t know what the committee tells, but so long to say on November 1, if we don’t know whether we own this lawsuit. It puts us in an unacceptable position.

Now, of course, Your Honor, your calendar is yours to control. You can kick November 1. I understand that. But we're trying to get out of this case, and this issue is ripe. There's nothing else coming down the pike that's going to make it less ripe or more ripe. Even if Your Honor rules completely in our favor on November 1, there's going to be an appeal. If

Your Honor rules completely against us, with all due respect, we'll probably take an appeal. It's a billion-five. It's a lot of money.

One way or the other, this lawsuit is going to blast. We need to know whether we own it. Because if we don't own it, we're not bringing it. And we need to know that, certainly before we have an argument on summary judgment.

The merits are set forth in great detail. You said you understand them. Unless you have questions, I think that's where I'd rest.

THE COURT: No. I'll give you a chance to reply. But I want to hear from Mr. Jones or whoever's going to be speaking for the government.

MR. JONES: Thank you, Your Honor. And again, may it please the Court, I'm David Jones, Assistant U.S. Attorney for the Southern District of New York, for the United States of America, and specifically the U.S. Treasury Department as co-DIP lender along with EDC.

Your Honor, I will focus on Your Honor's questions, which was my primary intention anyway to focus on jurisdictional and procedural aspects and deficiencies of the motion. At the outset, because Treasury takes with the utmost seriousness the accusation that it is acting contrary to a deal it made, I have to state just categorically and emphatically that Treasury believes itself not to be doing so. It is acting

consistent with its understanding of both the substance of the agreements it made without regard to what the papers say and also consistent with what the controlling papers, orders and agreements say.

I won't detail that, and I note -- am very sure the Court has absorbed the merits quite thoroughly from the parties' papers. But I need very forcefully to say that in open court as well and make that clear.

To focus on Your Honor's questions. First, the motion is indeed, Your Honor, jurisdictionally deficient for reasons of standing and ripeness. The motion is styled as one -- and of course we're focusing very directly on what the motion is. It's presented as one to enforce prior orders of this Court and a prior agreement approved pursuant to those orders from roughly a year ago. In both their papers and again in court today, the committee characterizes and identifies only two things as potential injuries, neither of which in fact constitutes an injury or a violation of an order or a threatened violation of an order, anything that could give rise to injury, in fact, for standing purposes, or a ripe dispute for case in controversy purposes.

Those two things are the fact that the government filed a very short pleading in the nature of a reservation of rights in the avoidance action, and all that said is that we don't read the committee to be seeking anything more than it

said in its underlying complaint, which is that it is pursuing an avoidance action to recover assets for the benefit of the estate under Section 551 by avoiding certain liens and certain transfers, which occurred when Treasury funding -- other Treasury funding was used to retire preexisting, seemingly secured debt.

Your Honor, that filing merely states accurately what the undisputed requirements of Section 551 of the Code are, and merely states what the complaint in the avoidance action in fact seeks, explicitly, in its claim to relief, namely avoidance of assets and recovery of -- avoidance of transfers of liens and recovery of assets, specifically for the benefit of the estate. And we quote in our papers that that is explicitly acknowledged by the committee, and they haven't said otherwise today, nor can they.

Your Honor, the only other alleged -- or potential violation of an order or agreement that's been identified is Treasury's alleged -- and it's true -- request that the debtors modify their initial draft plan of liquidation that was being circulated to avoid building in the conclusion that those proceeds are definitely reserved for unsecured creditors; and rather to acknowledge the existence of some question on that for potential future disposition. Could be through plan proceedings; could be through other order of the Court; could be by agreement of the parties. That is simply an accurate

statement of the state of affairs, and does to constitute an actual or threatened act by the government in violation of any preexisting order.

So again, focusing specifically on the motion before the Court, there simply is no violation of any order in play or threatened, and therefore nothing that gives rise to a ripe case or controversy for the relief expressly sought through that motion, which is --

THE COURT: Mr. Jones, their stronger position isn't so much that you're in existing violation of an order. I don't know if they would have chosen to go against the United States government for contempt, but obviously the failure to allege contempt or specific words of the order that have been violated, seems to me to suggest that that isn't their main thrust. Their main thrust is that you're about to act contrary to the letter or spirit of the order. Can you focus on that part, please?

MR. JONES: Yes, Your Honor. I think that's -- first off, the government's being entirely transparent about what it's doing. It's identifying this as an unresolved issue and stating that we have a clear understanding which is different from the committee's understanding, as they've expressed, of what the deal was that we entered. That -- to have different understandings of the meaning of an order or a deal does not constitute an act in violation of an order, and cannot.

We are fully committed to resolving that, either consensually, through private discussions, necessarily with the committee, or through open, fair, litigation in the courts. Which again, I simply don't see how open litigation with full notice and opportunity to be heard, could constitute a violation of a prior order, when we're seeking guidance of the Court if we can't resolve it, as to what an order means.

I'm unaware of any authority cited by the committee to suggest otherwise. What we're simply doing is saying hey, we seem not to be on the same wavelength about what these orders and these agreements mean. We had a different understanding. This has to be resolved sooner or later, if the avoidance action proves to be something, because it's important not to lose sight of the fact, this could be a fight over nothing, if the avoidance action proves to have no value.

But at any rate, to focus on Your Honor's question, there is nothing we have done or threatened to do or contemplate doing that could in any stretch be seen as a violation of an order. If the Court concludes that by making application to the Court or discussing in settlement discussions could constitute a violation of an order, I suppose they might have a leg to stand on, jurisdictionally. But I simply don't see how that could possibly be the case.

Your Honor, another thing Your Honor touched on in your initial questions is whether this isn't really something

in the nature of a request for a declaratory judgment, which should be teed up as an adversary proceeding under Rule 7001.

THE COURT: Well, pause, please, Mr. Jones. Because while Rule 7001 does say that declaratory judgments require adversary proceedings, the more fundamental thing is that declaratory judgment actions, like the Adelphia X clause action that I decided four years ago, six years ago, I don't remember when it was, tend, by their nature, to raise greater ripeness issues, and to a lesser extent, standing issues, than some other kinds of disputes.

MR. JONES: I think that's absolutely correct, Your Honor, and we might well be making a similar ripeness argument. I think if the committee -- my first observation is --

THE COURT: I thought you did.

MR. JONES: I'm sorry, Your Honor. If they came forward with a properly formulated adversary proceeding which would be procedurally within the requirements of Rule 7001, we might -- I would anticipate we would raise the same ripeness objection and say you can't get a declaration out of thin air just because you'd like to know something. There has to be some actual or threatened, again, violation of right or an order.

Now, they might be closer because I assume they would then -- then, their articulation of a desire to know, to have certainty, as they proceed with the plan process, might be

something that's cognizable. In the context, again, before the Court right now, which is a motion to enforce a prior order, whether or not committee members or unsecured creditors might want to have certainty on this issue now doesn't go to whether the motion, as they presented it, is properly before the Court or is justiciable.

Your Honor, a very important thing for me to say is that setting aside the jurisdictional and ripeness issues, and other procedural issues, this application is also premature. The government is keenly aware and Treasury is keenly aware that it is using taxpayer dollars to finance every major constituent in this case, certainly every recognized trustee, the committee's pursuit of litigation, including the avoidance action, and now the committee's pursuit of potentially an intensive action to allocate the potential recovery of that avoidance action, if such a recovery ever comes to pass.

Your Honor, the dispute is simply premature when we don't know if we're actually fighting about anything. It imposes on the Court's very scarce and overburdened resources, it imposes on -- tremendous cost on the government to fund all sides of this litigation, and it imposes effort and burden on important governmental actors whose time will be imposed on by attempting to resolve this issue. And so even if these jurisdictional and ripeness constraints didn't bar the motion's consideration outright, the Court should, in its discretion,

not entertain it now because it's is simply premature. The argued reason why it's necessary really doesn't hold water, Your Honor. There's an argument that unsecured creditors and the reasonable unsecured creditor should know whether or not they're going to have an actual interest in this action as they assess the plan, but Your Honor, what they already are being told is that the avoidance action is --

THE COURT: Well, is that their contention? Are they contending that it's something that's important to creditors in voting, or are they contending that they don't want to waste their money for your benefit?

MR. JONES: I think they're con -- well, I think they're contending both. If they're not contending the first at all, then I'm swatting at a nonexistent fly, Your Honor. But what I would say is if they have a concern about the disclosure statement, they can raise it and have raised it and it can be addressed through recognizing the existence of another contingency. There already was a contingency as to whether or not there will be a recovery at all. There would simply be an added recognition of a contingency as to how the benefits of the action would proceed.

This brings to mind for me, Your Honor, a very important correction I need to make. The committee characterizes this as a dispute between the government and them as to ownership of the action or a grab by the government for

ownership of the action. And that's a hundred percent not correct.

THE COURT: You stipulate that they keep owning the action, and it's only where the proceeds, if it is successful, ultimately, wind up?

MR. JONES: Correct, Your Honor. The action was brought explicitly for the benefit of the estate with proceeds to flow into the estate, and our position is disposition of estate assets is a matter for the plan, hasn't been decided by a prior order. We've been given an allowed superpriority administrative claim, and that by ordinary operation of the Bankruptcy Code, we are entitled to be paid subject to the timing limitations and other limitations that have been negotiated.

Now, of course, the dispute, the merits dispute will be whether we've actually waived more than that and waived any potential repayment from any proceeds that may flow in, and again, I'll not get into the merits because the Court didn't ask us to focus on that, but we obviously say emphatically that the answer to that is no, we didn't waive such a recovery.

Your Honor, I think I've largely covered the procedural points I wanted to make, but again, I do emphasize that the government believes it has correctly -- that it has -- it's proceeding based on its understanding of the deals, that that understanding is correct. I would note that even the e-

mail traffic provided by the committee is, in fact, consistent with the government's position. If you look at the June 30th e-mail characterizing what they understand to be the business deal, that simply says the government won't be paid until the estate wind-down is complete and successfully done -- and I didn't include this in my papers, Your Honor, really is why I'm getting into it.

THE COURT: I lost you there, Mr. Jones.

MR. JONES: I'm sorry, Your Honor. They rely on a June 30th e-mail from Amy Caten (ph.) stating what they believe to be the business deal. This is shortly before the July 5th --

THE COURT: Um-hum.

MR. JONES: -- order that we're fighting about. And what I am observing is that in addition to the things that we observed on the merits in our argument, that e-mail, on re-reading, I realize is consistent with our position. And what that e-mail says, first off, it's not competent to say what was in Treasury's mind, but it recites the committee's understanding as follows. "The wind-down loan is to be repaid only to the extent that the wind-down is complete and there is cash left over." That, to my reading, is the critical sentence in this e-mail, and we agree with it. Treasury did agree, as was obviously critical to all players in this case and to the Court, that this bankruptcy not descend into administrative

insolvency. As part of financing the sale and sponsoring the creation of New GM, which provided tremendous economic benefit to the unsecured creditor community through the equity stake, Treasury agreed and committed to provide adequate wind-down financing to see this case through, and it has done so. It agreed not to be paid until the wind-down is complete. And it has done so. It is living by that commitment. What we're saying is -- so what we're saying is consistent with this e-mail. We are not to be repaid until and unless the wind-down is done and there is cash left over. What we did not say is, and if that cash happened, directly or indirectly to derive from a particular source, the avoidance action, we'll take a pass on that. There's nothing explicit anywhere that says we entered such an agreement.

And so for those reasons, and the reasons stated in our papers, if the Court were to reach the merits, which we think is inappropriate, the motion should be denied. If the Court has no further questions?

THE COURT: No, I don't. Mr. Mayer, I'll hear reply, and then Mr. Jones, I'll hear surreply.

MR. MAYER: With respect to Your Honor's precise question and the invitation to cite a particular order that has been violated, I think I have found one. The order entered on July 5th provides on page 4 that "except as modified by the amended DIP facility," which was attached to the July 5th

order, "or this order, the final DIP order shall remain in full force and effect." Now, the final DIP order is a defined term, and it refers to the order that Your Honor entered on June 25th. The order that Your Honor entered on June 25th provides in paragraph 23 -- oh, and the July 5th order says that "the amended DIP facility is interpreted to mean the DIP facility under the June 25th order." So the June 25th order carries over to the amended DIP facility. Paragraph 23 of the amended -- of the original final DIP order says, "Parties for the DIP credit agreement may, from time to time, enter into waivers or consents with respect thereto without further order of this Court. In addition, parties to the DIP credit facility may, from time to time, enter into amendments with respect thereto without further order of this Court provided that, A, the DIP credit facility as amended is not materially different from the form approved by this final order, B, notice of all amendments is filed with this Court, C, notice of all amendments other than those that are ministerial or technical and do not adversely affect the debtors are provided in advance to counsel for the committee and any other statutory committee, all parties requesting notice in these cases, and the United States trustee. For purposes hereof, a material difference from the form approved by this final order shall mean any difference resulting from a modification that operates to shorten the maturity of the extensions of credit under the DIP

credit facility or otherwise require more rapid principal amortization and is currently required under the DIP credit facility." And there are a bunch of other clauses that are not relevant.

Your Honor, by etnering into, and I would, frankly, say compelling others to enter into six hours before closing, an amendment which, by its terms, purports to shorten the maturity of the DIP credit agreement withotu notice to this Court, I read that as a violation of this paragraph 23. I am embarrassed to say it is possible Your Honor could rule that the committee is estopped. We agreed to it; we had no choice. But there are other parties in this courtroom who are not estopped and who are prepared to take up the cudgels. So if Your Honor is looking for an order that Treasury violated, I suggest you look at paragraph 23 of June 25th. I'm not asking Treasury to be held in contempt; that does me no good. But I thiknk you heard Treasury say that even if we brought this on as an adversary proceeding, they'd make all the same arguments. This is never going to be more right than it is now, and frankly, I -- it boggles my mind to hear them say that this asset -- they had a secret intent to say that at the end of the wind-down, when we'd gotten all the money from the banks, that we couldn't distribute it before then. If we got the money in earlier, it had to sit there until the last claim was allowed? Nobody ever discussed that.

THE COURT: Before you continue, Mr. Mayer, do you have an extra copy of that paragraph 23 or do one of your partners or associates have one that you can hand up so we don't have to dig it off the Internet?

MR. MAYER: I'm happy to give you -- well, let me show this to Mr. Jones --

THE COURT: Is it in your spiral? I don't remember --

MR. MAYER: No, unfortunately, it's a different spiral, Your Honor. We didn't include it in the original -- we cited to it, and there's a docket number. I don't think I have it in my list of exhibits.

THE COURT: Well, if you can give me the ECF, I'm sure we can dig it out.

MR. MAYER: Absolutley, Your Honor. Hold on one sec.

MR. JONES: I'm sorry; Your Honor, I think it's Exhibit 4 to the Mayer declaration. It's from the June 25th '09 order.

THE COURT: Hang on a sec.

MR. MAYER: Oh, maybe you're right. "The guilty flee where no man pursueth." Yes, Your Honor, it's Exhibit 4; it's on page 27 to 28.

THE COURT: I've got it. Continue, please.

MR. MAYER: I think I'd finished, Your Honor.

THE COURT: Fair enough.

MR. MAYER: Or I've lost the thread.

THE COURT: All right, Mr. Jones, do you have any surreply, limtied, of course, to what Mr. Mayer said in his reply?

MR. JONES: Yes, Your Honor. As to the purported violation of an order, identified by mr. Mayer, first, Your Honor, that simply has nothing to do with the subject of this motion, as I understand it. The subject of the motion is whether the government is seeking to collect as an adminstrative claimant from the estate in the event, at the end of the wind-down period, the estate includes cash from any source that will be available, then, at that time to pay the claim. That simply has nothing to do with negotiated changes in -- of the nature that Mr. Mayer was describing. And I don't have my head around it well enough to characterize it correctly.

To the extent anyone believed there was an obligation to notify the Court or to seek pre-approval under the documents Mr. Mayer has identified, no one did. There were discussions between the debtors, Treasury, and the committee, and the requirement pertains to material changes. There must have been a collective judgment that this change was not material within the meaning of that requirement.

But most importantly, for purposes of the motion, Your Honor, that's simply a red herring because what's sought now is enforcement of the order with respect to whether or not the

United States has any right, at the end of this day, to be paid from a particular potential source of proceeds on account of its administrative claim. And as to that issue, the government has committed no violation of any order and is not threatening to do so. So for those reasons, our jurisdictional objections should be granted, and in addition, we stand by our observation that it's an inapproprpiate use of Court and party and governmental resources to fund and pursue this litigation at this time.

THE COURT: All right, thank you.

Here's what we're going to do, folks. I can give you a decision on this today, but I'm going to have to take a recess of probably at least half an hour to do it. We also have the dispute over the asbestos protocol, and on that one, I think I'd be in a position where I could rule without a recess. So rather than making you guys wait for a half an hour or more twiddling your thumbs, while I'm back in my chambers getting myself in a position to rule and dictate a ruling, I wonder if we should go straight to the protocol, get that behind us, and then anybody who wants to leave can leave, and then I can take the time I need to decide the matter and then come back out on the bench.

Mr. Mayer, you got your partner, Mr. Bentley, here, yet?

MR. MAYER: I told him we were going forward at 2, and

I tried to warn him about the security lines. I don't believe he's in the courtroom, yet.

THE COURT: Well, then, would you prefer that I take the recess after all? I mean, I guess you've got to, don't you?

MR. MAYER: I think I don't have a choice, Your Honor. I'm sorry.

UNIDENTIFIED SPEAKER: Your Honor, there's another reason to do that. Mr. Bentley delivered a proposal this morning that I would like to discuss with them before we argue.

THE COURT: Fair enough. Then I'll get off the bench now, and I'll be back to you when I can be back to you.

Okay, we're in recess.

MR. MAYER: Thank you, Your Honor.

(Recess from 1:57 p.m. until 3:31 p.m.)

THE COURT: Seats, everybody.

I apologize for keeping you all waiting.

In this contested matter in the jointly administered Chapter 11 cases of Motors Liquidation Company and its affiliates, the creditors' committee moves, under Sections 105(a), 361, 362, 363, 364, and 507 of the Code for an order enforcing first my June 25th, 2009 order giving final approval of the DIP financing in my case, two, my July 5th, 2009 order aprpoving an amendment to the DIP to provide for wind-down financing, and three, an agreement dated July 10th, 2009

between the debtors, the U.S. government, and Export Development Canada, that dealt with the DIP financing. As supplemented or clarified in the briefs and oral argument, the creditors' committee also asked me to take action to prevent what the creditors' committee alleges are threatened violations of one or more of those orders or agreements.

The underlying controversy involves the extent to which the government, after agreeing that its collateral would not include the proceeds of an avoidance action that the creditors' committee now has pending on behalf of the estate, might still recover from any proceeds that the estate might secure if the estate could prevail and collect in that avoidance action by means of a separate superpriority claim that the government obtained to bolster its right to repayment under the DIP loan.

The creditors' committee motion is denied without prejudice. I understand why the creditors' committee cares about the underlying issues and why it would like to know how the underlying controversy would be decided. But for reasons that I'll explain, I think it's quite clear that there's been an insufficient showing that any of my orders have been violated yet, if they ever will be, or that there's an imminent threat that they're about to be violated. Thus, jurisprudential concerns articulated under the rubrics of standing and ripeness deprive me, as a federal judge, of the

ability to decide them now. My findings of facts and conclusions of law in connection with this determination follow.

Turning, first, to my findings of fact, given the many things on our plate for today, familiarity with the background is assumed. While dealing with the merits of this dispute would require much more factual discussion and perhaps even an evidentiary hearing, the key facts here can be addressed much more briefly. It appears to be undisputed that the government did two things that occasioned the creditors' committee's request for relief today. First, the government filed, in court, or on our ECF system, a document in the avoidance action that the creditors' committee brought against JPMorgan Chase in which the creditors' committee is trying to avoid a security interest under which JPMorgan Chase was secured as a secured lender and paid off back in 2009. In that document that the government filed, which was denominated as a reservation of rights or which has at least been colloquially referred to as such, the government noted that any recovery was for the benefit of the estate, in contrast to any subset of the stakeholders in the estate, such as its unsecured creditor community, and at least impliedly, not necessarily for the benefit just of unsecured creditors.

Secondly, the governmnnt asked the debtors to revise their proposed reorgnization plan to provide, in susbstnace,

that if the creditors' committee's litigation against JPMorgan Chase and/or its syndicate was successful, and if it brought in value, the rights to the recover would thereafter be determined before me, as contrasted to going straight to the unsecured creditor community.

I think it's a fair inference that the government was taking steps to protect its ability in the future to share in the proceeds that might ultimately result from the avoidance action by means of its right or, perhaps, only arguable right -- a matter that I don't, today, decide -- to a superpriority administrative claim under certain circumstnaces. But even after reading the briefs, I didn't see more than that. And even after reading the briefs, I didn't see how such measures, at least without more, would violate either of the DIP financing orders. In fact, the DIP financing orders at least seemingly gave the U.S. government -- or, maybe I should be more precise and say the DIP lenders, perhaps also including Export Canada -- that superpriority admin claim. See the wind-down order at 4. Although it's at least arguable, if not plain, that such rights could be subjecgt to limits that the parties could disagree about down the road, and undoubtedly, they might also argue about the meaning of nonrecourse language elsewehere in the wind-down order if they ever got to a dispute concerning the government's request for any administrative expense claim that the government might hereafter file.

So early in the oral argument, after having some uncertainty in my mind after reading the briefs, I asked counsel for the creditors' committee, in substance, whether the creditors' committee was alleging an actual violation of an order or merely a threatened one, hoping that I'd be able to get my arms around whether I actually had an allegation of violation of the order itself. I didn't hear anything that satisfied me that there really was any actual violation of the order. The single provision that the creditors' committee pointed to was paragraph 23 of the June 25th order. It provides, as relevant here, "The parties to the DIP credit facility may, from time to time, enter into waivers or consents with respect thereto without further order of this Court. In addition, the parties to the DIP credit facility may, from time to time, enter into amendments with respect thereto without further order of this Court provided that, A, the DIP credit facility as amended is not materially different from the form approved by this final order, B, notice of all amendments is filed with this Court, C, notice of all amendments ... are provided in advance to counsel for the committee and ... other statutory committee[s], all parties requesting notice in these cases, and the United States trustee." I've left out immaterial language from that lengthier quote. The paragraph in question, paragraph 23, went on to set forth standards for determinign what a "matieral" difference would be. But as is

apparent from the language that I just read, that paragraph is permissive. It doesn't command anyone to do anything. In the two places where it's operative, it begins "may" not "shall".

And the proviso sets forth conditions that must be satisfied if that permissive power is exercised. The proviso doesn't set forth any commands, either. It merely provides for things that must be done if the power to amend is exercised.

So I find as a fact, or a mixed question of fact and law that none of the orders has yet been violated, if any ever will be. The creditors' committee hasn't established that either of the two acts that the government took violated any order. Nor do I see any threat of an imminent violation.

Turning now to my conclusions of law. The Second Circuits explain that the constitutional requirements for standing are grounded in Article III of the Constitution which limits the jurisdiction of federal courts to cases or controversies. See Port Washington Teachers' Association v. Board of Education, 478 F.3d at 501. The Supreme Court has laid down further requirements for standing in the federal courts that are binding on us Article I judges, just as they are binding under judges who get their tickets from Article III. One of the requirements in injury and fact places the burden on a plaintiff to demonstrate an invasion of a legally protected interest which is, A, concrete and particularized, and B, actual or imminent, not conjectural or hypothetical.

See Lujan v. Defenders of Wildlife, 504 U.S. at 560-561.

Of course, the creditors' committee asked me to enforce prior orders, but we have to, as I just did, look at those prior orders to see whether that's the substance of its request or whether it is doing something short of that. And I find as a fact or as a mixed question of fact and law that it's doing something short of that. The motion alleges no past or certain of violation of order, and this isn't the type of situation where, well, it hasn't done it already; it's about to do it tomorrow or even next week. There's been an insufficient showing a violation is imminent.

A second aspect of the Constitution's case or controversy requirement, the rightness doctrine, serves to ensure that a dispute has generated injury sufficient to satisfy the case or controversy requirement of Article III. See Clearinghouse Association v. Cuomo, 510 F.3d at 123. This requirement requires that the injury be imminent rather than conjectural or hypothetical, see Brooklyn Legal Services Corp. v. Legal Services Corp. 462 F.3d at 225, and for the reasons that I articulated a moment ago, I can't make such a finding. At this point, all that we have is what amounts to a reservation of rights to avoid forfeiting rights that may or may not be invoked in the future if the litigation against Chase and its syndicate is successful, if it brings in money, if the government needs to file an admin claim or superpri

admin claim for repayment, and if the government decides to file, such a claim. That's an awful lot of ifs. Of course, I understand that planning one's life would be much easier for the creditors' committee if it got this information, but this is a problem we bankruptcy judges have all the time, where decisions, if made early, could facilitate plan negotations, give people financial underpinnings to have -- to shape their plan in certain ways or to negotiate with other parties-in-interest, and for very good reasons grounded partly in the rules that are applicable on bankruptcy judges like other federal judges, and partly because we would never get our work done if we were deciding issues every time somebody wanted us to, we bankruptcy judges have to invoke ripeness doctrine to triage our caseload and deal with those kinds of matters that need to be decided.

Now, especially when you consider this in the context of two other published decisions that I have in this area, those two decisions tell us how we need to go here. In the first of them, In re: Adelphia Communications Corporation, 307 B.R. at 436-441, what those who were present in the Adelphia case remember as the X clause case or the X clause controversy, the subdebt in that case wanted very badly to get a ruling from me as to the extent to which an X clause in the applicable bond indenture would give them the right to securities if -- and at a senior level, if Adelphia confirmed a plan which would give

securities to its stakeholders. And we had a major discussion about whether that need, which was very real, and which would, without a doubt, materially have advanced the plan negotiations, passed muster under ripeness doctrine. And I ruled, as those of you who were involved in Adelphia, as I know some of you are -- or were, may well remember, I ruled that it didn't pass muster under ripeness and muster doctrine. As I said there, "Thus, upon consideration of the case law of this area, this Court concludes that the requirements for establishing the required case or controversy and the related requirement of ripeness have not been satisfied. While the Court fully understands the monetary consequences to the creditor groups concerned of a decision on the merits, and the subdebt's preference that the issue be decided now as an aid to the parties' further negotiations and decisions as to litigation positions, the Court cannot decide the merits at this time. The feared consequences remain a mere possibility that may or may not occur as expected or may not happen at all."

Similarly, in another of my Adelphia decisions, see 364 B.R. at 530, I likewise was constrained from dealing with some of the issues because of ripeness concerns. Quoting from that second decision: "Other contentions by the objectors must be rejected or are not yet ripe. One such contention is that the proposed settlement represents a violation of provisions of

the settlement agreement between the debtors and the Regises (ph.) entered into in April 2005 under which the debtors agreed not to oppose payment of defense costs by the insurers to the Regises under the policies. I agree this agreement must be honored by the estate but do not see a violation of that undertaking based on anything the estate has done yet. And while measures by the estate to secure payments under the policies to which the estate itself is entitled would at least seemingly not be violative of that undertaking either, it's sufficient to await any future action proposed by the estate and then see whether or not it should be violative of that obligation."

Finally, as I noted, the request that I have here is, in substance if not in name, a request for a declaratory judgment. It's a request for a declaratory judgment as to the government's rights to a superpriority claim if there are proceeds for the superpri to attach to and if the government decides to file it. As I indicated in oral argument, I wasn't that troubled by the fact that the creditors' committee didn't commence an adversary proceeding as Federal Rule of Bankruptcy Procedures 7001 requires. I think there have been times, in this district and other districts -- I think Judge Drain, in this court, has the leading decision on it, but there are probably others including a dictated decision by me on this point -- that when we can provide adequate due process, we

don't always make people go through the formalities of an adversary proceeding if we can make sure that fairness can be accomplished by the measures that accompany contested ones. But the same reasons that we don't decide declaratory judgment actions in the absence of a sufficiently concrete and actual controversy apply in declaratory judgment actions, and they equally apply, at least by analogy here.

And for this reason, too, I can't decide this issue now, notwithstanding what I am confident is a very good reason for which the creditors' committee asked for it.

Mr. Jones, you or your colleagues are to settle an order in accordance with the foregoing.

MR. JONES: Very well, Your Honor.

THE COURT: I'd like to go straight, now, into the asbestos protocol issues, but I'll allow anybody who is here on other matters to be excused.

MR. MAYER: Thank you, Your Honor. Your Honor, thank you. My partner, Mr. Bentley, will handle the asbestos matter.

THE COURT: Of course.

MR. KAROTKIN: Your Honor --

MR. BENTLEY: Your Honor -- oh, I'm sorry.

MR. KAROTKIN: Just give me one second. Sorry. Just a housekeeping. On the holding date for the disclosure statement hearing --

THE COURT: Yes?

MR. KAROTKIN: -- I think we're okay with the 9th.

THE COURT: Okay. The 9th it will be. I think you also have other GM matters on at that time, right?

MR. KAROTKIN: Yes, sir.

THE COURT: So why don't you put this on your calendar for that day and have either you or one of your staff give me a recommendation as to how in the context of the other matters you want to deal with it, and perhaps I can cross my fingers whether -- while you have the holding date, you don't need to use it.

MR. KAROTKIN: Okay. I think that's at 9:45.

THE COURT: Right.

MR. KAROTKIN: Thank you, sir.

THE COURT: Sure.

MR. BENTLEY: Just one second, Your Honor.

THE COURT: Yes.

MR. BENTLEY: I think we have an agreement.

THE COURT: Then I'd be happy to wait.

(Pause)

MR. BENTLEY: I apologize, Your Honor.

THE COURT: Mr. Bentley?

MR. BENTLEY: Yes, thank you, Your Honor, for giving us a moment. I'm very happy to inform the Court that after several months of a great deal of back and forth without success in trying to reach an agreement among the various

parties, we -- I believe, we have finally reached an agreement. There's a few tiny language issues that, after we discuss this on the record, I would suggest we have a very brief break to allow us to work out the final language issues, but what I would suggest is the following.

First, a very brief description of what has happened over the past two hours. The parties -- most of the parties spent a good chunk of the last two hours meeting in the hallway and trying to reach an agreement.

THE COURT: If I had known you were doing that, I would have given you a conference room.

MR. BENTLEY: The hallway was actually fine, Your Honor.

THE COURT: All right.

MR. BENTLEY: We appreciate -- the next time, we'll ask for a conference room. The parties who have reached agreement are ourselves, the creditors' committee, the ACC, the FCR, and the trusts and claims processing facilities. I understand the debtor may have its own views, and what I would suggest is that I first describe the basic outlines of the agreement we've reached, that I then let the other parties to the agreement add whatever they may want to add, and let Mr. Karotkin speak for the debtors. Then if Your Honor is inclined to proceed with this as an agreed order, I would ask that we then have a five or ten-minute break to allow myself and Mr.

Swett and the other parties work out the final, very -- what I believe are very minor language issues. We would then propose to read it into the record and then overnight create a written order that should be verbatim identical to what we read into the record and submit that to Your Honor tomorrow.

THE COURT: Keep going.

MR. BENTLEY: And we would ask as part of this deal that if Your Honor approves this agreed resolution, that Your Honor will today, if possible, that we are authorized to serve our subpoenas because we are quite anxious that that process proceed without further delay.

The -- here are the basic terms of the agreed resolution. As Your Honor will recall, the creditors' committee is concerned with the ACC's approach to confidentiality. It was essentially two-fold.

We were concerned that a third party neutral would be brought in and would perform a lot of the work that we think it's appropriate for the parties' experts themselves to perform. And second, we were concerned that the result, the end result of this process, would be that the parties' experts would not receive all of the data that they need for their analysis, but would receive a redacted database which, in our view, would be missing some important data fields.

The resolution that's been now agreed to by the parties does not -- has removed those two features which we

objected to. This proposal will not require the retention of a third party neutral and it will not result in any data fields that we believe are needed for the estimation analysis to be redacted. We'll be getting everything that we need.

What the agreed resolution provides is that the trusts will produce the data directly to the experts for the four parties to the estimation proceeding; namely, the debtors, the creditors' committee, the ACC and the FCR. Each party's expert will then perform its own matching exercise, its own exercise of matching the trust data and merging it with other data sources. The experts will then meet and they'll make a good faith effort to resolve any disagreements they might have about the results of the matching exercise. They'll have a specified period of two weeks to meet and try to reach agreement.

And after they reach ag -- and the anticipation is that they'll reach agreement on many issues. Perhaps not reach agreement on some, but at the end of this exercise, they will -- everyone will know which matching issues are agreed and which remain in dispute. There would then be a defined period of time thereafter for the experts to submit their expert reports.

Now, to satisfy the confidentiality concerns that have been raised by the ACC and the trusts, the agreement involves a set of data security restrictions which are designed to keep as tightly under wraps as we think is possible the claimant-

specific sensitive data, claimant names and Social Security numbers in particular. And the basic approach that's employed, Your Honor, is that that data, Social Security numbers and other similarly sensitive data, shall be used only for matching purposes.

Once the matching process is completed, then that data twill be taken off the networks -- of the computer networks of each expert, will be put on a device and stored in a secure location, out of the way, with the proviso that to the extent matching issues come up down the road as the process proceeds, as we expect they probably will, each expert can retrieve the data for -- to deal with the new matching issues as they arise. And then when done, put it back in its secure location.

That is the basic process, Your Honor, and what I would suggest is that I now yield to Mr. Swett to inform Your Honor if I got that wrong in any respect. And then let the other parties be heard to the extent they see fit.

THE COURT: All right. Mr. Swett?

MR. SWETT: Thank you, Your Honor. As I listened to Mr. Bentley, I did not hear anything that's in significant tension with my understanding of the agreement. But there are a couple of points I would like to emphasize.

The data security provisions consist of stage by stage production of trust data, expert linking that data to other sources the experts believe will be useful in confirming that a

claim that shows up under one unique identifier in GM's data is the same as a claim that shows up as another unique -- under another unique identifier in one or more of the trust data.

THE COURT: In other words, that it's the same guy?

MR. SWETT: It's the same person behind the claim. That's seemed to be the driving concern of the UCC and we have tried to accommodate that. And the key to it is that after the matching is done, a new discrete data set is created which strips out names, Social Security numbers and certain other agreed fields that would tend to reveal the identity of the claimant if erred outside of the sealed record, in this case, or in the world at large.

So that's the first thing, the stripping out of identifying detail from the data set that will ultimately be used in court. The experts will have, as an interim step in expert discovery, they will come forth with their matched data sets and any disagreements concerning the matches will be identified and there will be a defined period of time to attempt to resolve or at least to narrow those disagreements.

This has two virtues. It allows us to set aside permanently, at that point, the original data concerning those matches that are not in dispute. And to narrow the issues at the data level so that, to the greatest extent possible, when the experts come before you to give their opinions and be cross-examined, each one is working with a common set of data.

That -- it won't be perfect. We're not entirely there, but it'll be a whole lot better than if each came to court with multiple data sets that hadn't been reconciled. We will at least know what the hopefully narrow areas of disagreement are.

The -- there is an aspect of this understanding that I don't think I heard Mr. Bentley mention that is material to the ACC. Because of events going on in the world, as I adverted to in my last -- the last of my letters to Your Honor on this subject, and because of the great interest in -- among certain sectors of tort defendants and insurers in getting into trust data that is not available to them in the tort system, and because of the risk that you identified when ruling on the 2004 application to the legitimate concerns and interests of absent individual asbestos claimants when it comes to actually litigating their claims against GM or anybody else --

THE COURT: What I referred to as the one-on-ones?

MR. SWETT: Yes. Because of those concerns, the raw data and certain data sets derived from the raw data that will be defined in this order, need to be subject to a provision which must be satisfactory of course to Your Honor that the information in those sets and in those forms will not be subject to production or to subpoena.

What is going on here is the Court is supervising the creation of a set of data for the limited purposes of claims estimation in this case. The Court, therefore, should make

adequate provision to ensure that the data in the forms that proceed from stage to stage until we get to that nearly single data source for use at trial is protected.

I would remind you that the TDP, the trust distribution procedures of all of the trusts who are respondents to these subpoenas, all provide for the confidentiality of the information. For reasons that you've ruled upon and that we need not revisit, you have nevertheless decreed that for the limited purposes of this proceeding, this information must come forth here.

Well, we wish to provide failsafe assurance that that raw data will not find its way into other case or proceeding. We think the way to do that is based on Section 105 of the Code, a decretal provision of the order we're now proposing that basically says that the information in those forms shall not be subject to subpoena. That's an important provision.

The duties and obligations created by this order will be in addition to and not in derogation of the duties created by the confidentiality agreement previously so ordered by Your Honor. But that agreement doesn't address in the pointed fashion that this order would the risk of the inappropriate use of this information which is being called forth for a specific purpose in other settings and for other purposes not intended by the Court.

It also -- the confidentiality also -- agreement also

does not address something that this order does which is the massaging into as agreed upon master set of data as these parties can achieve for your -- for the benefit of the substantive disputes and airing of the real issues of substance at the eventual hearing so that we don't get mired in a whole bunch of nitty-gritty details concerning whether or not we agree to the data.

So those are two interests that are addressed in important ways by the agreement that we're now putting forth that were not addressed and were not intended to be addressed by the confidentiality agreement which had other, more limited purposes.

Thank you, Your Honor.

THE COURT: Okay. Before I give Mr. Esserman a chance to speak, Mr. Bentley, do you have any problems with what Mr. Swett said?

MR. BENTLEY: I do not, Your Honor.

THE COURT: Okay. Mr. Esserman?

MR. ESSERMAN: Sandy Esserman for the record. I concur with what Mr. Swett said. Thank you.

THE COURT: Okay. Mr. Karotkin, you want to be heard?

MR. KAROTKIN: Thank you, Your Honor. The debtor has the same concern it had from day one in connection with this process, is that it be done efficiently, economically and expeditiously.

We don't want to stand in the way of what they've agreed to here. However, I will point out that in connection with the agreed-to, "agreed-to" 2004 order in the confidentiality agreement, it took, I would say, ten days of nonstop lawyer time to finalize that agreement at an extraordinary cost to the estate. I don't think in my career I have seen more drafts of confidentiality agreements in my -- there must have been fifty drafts of the agreement before it was finalized and sent to Your Honor.

And as I said, the debtor is concerned with the time and expense and how this whole process is going to hold up confirmation and making distributions to creditors. And I am also concerned about them going back tonight to try to agree upon a form of order because my big fear is we go through the same process we did six or eight weeks ago. And this is -- just serves to delay the hearing before Your Honor when you have to decide the issue.

And, again, I'm not going to -- I'm not asking you to not approve this, but I want people to be mindful of what we're trying to accomplish here. And this, in my view, has gotten way out of hand. There was a confidentiality agreement drafted, agreed to and I just don't understand why that's not sufficient here.

THE COURT: All right. Mr. Bentley?

MR. BENTLEY: Just very briefly, Your Honor. I second

one of the points that Mr. Karotkin made and that is, it is very important to us that this order not be further negotiated. And so, in fact, what we've worked out is once we come back to Your Honor after our five or ten minute break, we hope what we will have, precisely for that reason, is an order that we can read into the record. And I have to apologize in advance. It's going to be a little bit tedious; it'll be about four pages typed. But the reason we think it's valuable to read it into the record now is so that we're done. And there will be no further negotiations.

THE COURT: All right. Yes, sir. Come on up here. Identify yourself, please. I can't rule out the possibility that I've seen you before, but I'm tired.

MR. CORDARO: You have, Your Honor. Joseph Cordaro from the United States Attorney's office on behalf of the United States and specifically Treasury. And without being repetitive, I know it's been a long day, I just want to echo some of the concerns that Mr. Karotkin just mentioned to you.

Obviously, this is money coming out of the DIP and it's tax payer money and I think the word Mr. Karotkin used was "efficiency". And that is the concern of the government, too, that this process be as efficient as possible.

THE COURT: All right. Thank you, Mr. Cordaro.

MR. CORDARO: Thank you, sir.

THE COURT: Everybody had a chance to speak in as much

as anybody would want to up to this point?

(No response)

THE COURT: All right. Mr. Karotkin, Mr. Cordaro, I share some of your concerns and if this matter had been argued as until thirty seconds ago or whatever I thought it was going to be, my preliminary remarks after I read all of that stuff would have echoed some of the comments that you and Mr. Cordaro stated.

But with that said, I'm a pragmatist. I don't look gift horses in the mouth and anything that decreases the degree of litigiousness in this case or in my other cases is, with rare exception, to be welcomed.

I am going to take this to the next step which is invite you to put your deal on the record. While everything we say, even in a dictated decision, tends to acquire a life of its own, I don't know whether the relatively unusual provision about me entering an order saying that what gets created is going to be exempt from further disclosure should be a precedent in the future. But I think that under the unusual circumstances here, especially since we are in substance shepherding the preparation of new data for the use of a particular case makes a deal of the type that was done acceptable to me. And I'm not going to stand in the way of issuing an order that protects it from disclosure and subpoena in another case.

So if you can make the deal, I will enter such an order which, presumably, will be binding on other courts as well as on other litigants.

So unless you have any more, then -- I guess your thought, Mr. Bentley, Mr. Swett, is that we would take a recess. You would pull out your pads and agree on the remainder of your language and then you would come back after a defined period of time?

MR. SWETT: Yes, sir. My friend Mr. Bentley is an optimist, he said five minutes. I would say, realistically, it's going to take us fifteen.

THE COURT: If you can do it in as little as fifteen minutes, I'll be very pleased.

All right. We'll take a recess then. I think, under the circumstances, since I've been around the block a few times, too, somebody better knock on the door of my chambers when you're ready.

MR. BENTLEY: Judge, if there is a conference room we could use that would be helpful.

THE COURT: You can use the one that I share with Judge Liflin behind me.

MR. BENTLEY: Thank you, Your Honor.

THE COURT: Right. We're in recess.

(Recess from 4:15 p.m. until 5:26 p.m.)

THE CLERK: Take your seats, please.

THE COURT: Mr. Bentley?

MR. BENTLEY: Your Honor, I'm glad to report -- for the record, Philip Bentley for the creditors' committee.

I'm glad to report we have resolved the few remaining issues. I'd like to mention just one substantive issue. Mr. Karotkin may want to add a comment on that issue. And then what we would suggest is Mr. Esserman made a wonderful suggestion which is rather than burdening the Court with a fifteen minute reading of this order, we have made a few copies of it and I would, with the Court's permission, I would like to lodge the original of the -- the original marked-up agreement with the Court.

We will then, overnight, turn the document, produce a clean typed up version of the stipulated order, circulate it among all counsel, make sure we have no disagreements that this accurately reflects what has been agreed and what has been lodged with the Court. And we'll then file that with Your Honor tomorrow.

THE COURT: Okay.

MR. BENTLEY: The one substantive point that I'd like to mention is one of -- perhaps the most substantive sticking points that we have just been discussing and have just resolved involves timing. And what we have agreed and what's reflected in the order that we'll be handing up is as follows.

It relates to the timing of the matching process and

the filing of expert reports. Specifically, the parties have agreed that within two weeks after the production of the trust data, the experts will exchange their own lists of claimants, their own, in effect, submissions on the matching issue. The experts will then take a period of two weeks to try to reach agreement as much as they can on those issues. And then two weeks thereafter, in other words, a total of six weeks after the production of trust data, the experts will exchange initial expert reports.

THE COURT: Okay.

MR. BENTLEY: Thank you, Your Honor.

THE COURT: Mr. Swett?

MR. SWETT: Your Honor, I would just like to point out that subject to the provision that Mr. Bentley just recited, this isn't a scheduling order. There are other aspects of this schedule leading to the contested hearing on estimation that would have to be worked out. In particular, the period for expert reply reports will be important in this case because of some information extrinsic to what we've been talking about involving the trust production that the UCC is working with, that we will not know what they're doing with it until they produce their expert report.

And we don't want to try to anticipate and replicate that work; that would be wasteful. So we're going to have an issue as to the timing of reply reports. And that will be

important. In addition, we may seek some fact depositions. Right now there's no --

THE COURT: You may seek some what?

MR. SWETT: Some fact depositions.

THE COURT: Um-hum.

MR. SWETT: There is, as of yet, no overall scheduling order and I just wanted to point that out.

THE COURT: All right. Mr. Karotkin?

MR. KAROTKIN: The concern I have is simply with timing, the way this looks like it's playing out to me before we ever get to an evidentiary hearing, it looks like we're well into the first quarter.

And my concern, Your Honor, is that this doesn't hold up distributions under the plan because with a -- as you know, with a pot plan, you have to know what the denomina -- you have to know the denominator before you can make distributions. And I would assume that Mr. Bentley and the unsecured creditors' committee ought to be more concerned about that than I am because it's his clients that the distributions -- who are getting the distributions, because it's all Class 3.

And I think that although I'm not objecting to this, at some point in the near future, we have to figure out a methodology to address that issue so we can move ahead with confirmation and then not continue to wait forever until we make distributions.

THE COURT: I assume that making multiple distributions to this many creditors in a case of this character is a very expensive process.

MR. KAROTKIN: It is, Your Honor, but I'm not really even talking about that. I'm talking about an initial distribution. We can't make an initial distribution unless the asbestos liability is either quantified or capped.

THE COURT: Um-hum.

MR. KAROTKIN: And we may have a way to cap it for distribution purposes that -- and we may be able to agree on that. But I'm just alerting the Court to an issue that we, as the debtor, are particularly sensitive to.

THE COURT: Mr. Bentley, do you want to comment on that?

MR. BENTLEY: I would agree with Mr. Karotkin's comments. That issue is a matter of great importance to us and we do plan to come back to Your Honor with a proposal with respect to the setting of reserves, with respect to the asbestos claim.

And we think that will be a very important issue.

THE COURT: Um-hum. All right.

To what extent do I need to rule on anything other than to say that this doesn't offend me? Your giving me the document and then you're superseding it with one or confirming that it's the final tomorrow?

MR. BENTLEY: Your Honor, the Rule 2004 order that the Court entered back on August 24 addresses what happens in the event an anonymity dispute is raised by the ACC.

THE COURT: And then they serve the notice confirming the existence of that dispute which put the subpoenas on hold.

MR. BENTLEY: Correct. And what is says specifically with respect to service of the subpoenas, is the subpoenas may not issue pending further direction from the Court.

THE COURT: Yeah. I understand that, Mr. Bentley. Remember I read the papers thinking I was going to have an argument today.

MR. BENTLEY: So we -- and Your Honor, I would have loved to have come before you a couple of days before with a resolution. This happened today.

What we would ask Your Honor is that, from the bench, if Your Honor feels comfortable doing this, you'd direct. You provide the further direction that's contemplated by the order. Namely, that we are now authorized to go ahead -- to proceed and issue our subpoenas.

THE COURT: Does your having formulated the document give me the predicate upon which I can do that?

MR. BENTLEY: The fact that all of the parties involved in this issue were before the Court today and agreed on this resolution, I believe does give you the authority to do that.

THE COURT: All right. Mr. Swett, any objection?

MR. SWETT: Your Honor, I think the more prudent course would be to receive the conformed order tomorrow and sign it and that will be the direction to proceed. It's already twenty of 6 this evening, so the subpoenas wouldn't presumably be going out today. They can go out tomorrow with the signed order buttoned down and all issues will be avoided.

THE COURT: Um-hum.

MR. BENTLEY: We are okay with that, Your Honor.

THE COURT: All right. Fine. Have we lost Mr. Esserman? Do I have any of his colleagues here?

MR. RUSSO: Your Honor, we agree with that procedure. Thank you.

THE COURT: Okay. Just identify yourself, please.

MR. RUSSO: I'm sorry, Your Honor. Bob Russo for the Futures Claims Representative.

THE COURT: Okay. All right. Then let's do it tomorrow.

MR. BENTLEY: And if I may, Your Honor, per the procedure I described, I'd like to lodge with the Court the mark up that the parties have agreed to.

THE COURT: Okay. Okay, fair enough. Do we have any further business today?

MR. BENTLEY: Not as far as we're concerned, Your Honor.

MR. KAROTKIN: No, sir.

THE COURT: All right. We're adjourned.

IN UNISON: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 5:35 PM)

I N D E X

RULINGS

Potential Challenges to Municipalities Based on Applicable State Law Disclosure Statement is Conditionally Approved	75	17
Pro Hac Vice Application of James Potter, Esq. Granted	76	11
Motion of the Official Committee of Unsecured Creditors of Motors Liquidation Company to Enforce (A) the Final DIP Order, (B) the Wind-Down Order, and (C) the Amended DIP Facility Denied	110	17

C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true and accurate record of the proceedings.

Dena Page

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